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Volume II

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term, 1942

FEDERAL [illegible]

THE [illegible]

FEDERAL [illegible]

AETNA [illegible]

FEDERAL [illegible]

MARQUE [illegible]

FEDERAL [illegible]

CALAVE [illegible]

FEDERAL [illegible]

HURON [illegible]

FEDERAL [illegible]

SUPERIOR [illegible]

ON WRITS OF [illegible]

PETITION FOR CERTIORARI FILED JANUARY 26, 1943
CERTIORARI GRANTED MARCH 15, 1943

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Pages 7553 to 8348.

TRANSCRIPT OF TESTIMONY.

Colloquy 7575

WITNESSES FOR RESPONDENTS. (CONTINUED).

Testimony of:

Bowen, John C. 7795
Brobston, Joseph 7643
Fellows, A. M. 7553
Kemp, James W. 8314
McKee, F. C. 8179
Robeson, H. B. 8266, 8324
Scott, Harold M. 8089

(Testimony of Witnesses contained in pages 25621 to 28224 of the Original Transcript.)

25621 Brooklyn, N. Y.,
October 25, 1939.

25622 A. M. FELLOWS thereupon resumed the stand and testified further as follows:

Direct Examination (Resumed) By Mr. Leisure.

Q. Mr. Fellows, when we adjourned last night I had asked you what base you used on your commercial business, and when you reduced the price. That was the last question. I would like to take it up from that point this morning, if I may.

Do you have in mind the matter that I am referring to, or do you want to look at the record?

A. No. I think you are referring to where you asked me if I knew what the—

(A copy of the official transcript was handed to
25623 the witness.)

A. Yes, I have in mind what you refer to, Mr. Leisure.

By Mr. Leisure:

Q. I notice in looking at your answer in the record, Mr. Fellows—do you want to add anything? It didn't seem to me that it was a complete answer, when I looked at it.

A. My recollection was that it wasn't quite clear; that is, I had an idea of the base that you were talking about, what it was there, but I didn't want to testify to a definite amount without knowing definitely what that was.

Q. Well, you said "without referring to some record on it." Do you want to refer to some record on it?

A. I have no record on it, no, that I—I just recall that the base at LaSalle was 85 cents, and the base at St. Louis was 95 cents, both including discount. Previous to that 1932 bid, the base at both points was $1.10.

Q. I would like to address your attention to another Commission exhibit, Mr. Fellows, being Commission's Exhibit 1888. It is a tabulation of bids on the Illinois Highway Division opened on February 20, 1933. It indicates that your company bid on that letting.

Are you familiar with that letting?

A. Yes, sir.

25624 The witness identified Resp. Ex. 1021 A and B as the final work sheet Alpha used to compile its prices and transfer these prices to the bids it submitted on this letting of February 20, 1933 for the Illinois State Highway Department. That sheet was made up in exactly the same manner and used in the same way as he has described with respect to other work sheets with regard to bids.

Voire Dire Examination By Mr. Wooden.

25625 The pencil changes across the top, above the names of the basing points, are the bases used at the subsequent letting the year following, and had nothing to do with this letting at all. The typewritten figures underneath the names of the basing points were the bases used in this letting; and the encircled figures in blue pencil show the mill that makes the lowest combination of base plus freight. The pencil figures at the bottom of the last two columns on Resp. Ex. 1021 B are in the witness's handwriting, and this "116" means $1.16 the average mill net on shipments from the La Salle Mill. That is not the rated average. That is just the average of all the points involved, treating each point equally and the one under St. Louis, some of these points "we" did not bid on from St. Louis bids "we" did bid on gave an average mill net of $1.20 and $1.15 or what "we" would net from St. Louis had "we" bid on all points.

25626 1.15 is not an average of La Salle and St. Louis combined.

(RESP. EX. 1021-A and 1021-B was offered and received in evidence.)

Direct Examination (Resumed) By Mr. Leisure.

Q. With respect to that 1.35 figure, you were discussing with Mr. Wooden the figures about this 1.35 shown at Alpha and LaSalle. Do you know when those bases were increased to that figure?

Mr. Wooden: It is on the top, Mr. Leisure.

(Mr. Leisure hands Respondents' Exhibit 1021-A and B to the witness.)

A. Well, after the—some time after the letting of
25627 1932, the Illinois letting of 1932, the basis of LaSalle and St. Louis were increased, or, rather, were decreased from $1.10 to 85 and 95. Subsequent to that, some time during the summer of 1932, there was another increase, and I think later on in the year 1932 it was increased to $1.35, and those are the bases—$1.35 was the basis we were using when we figured this bid.

Q. Do you know whether or not your company initiated those increases, Mr. Fellows?

A. I don't think we did. We found these increased prices in the field, and we were just very well pleased to take advantage of it after our disastrous experience of the last two years. We simply wanted to get some more money for our cement.

Q. Did you tell Mr. Wooden what those red dashes are on the edge, opposite to the prices?

A. Well, those red dashes are points at which we bid for shipment from the St. Louis plant. We submitted two bids at this letting.

25628 Alpha submitted 2 bids and the witness identified Resp. Ex. 1022 and Resp. Ex. 1023 as the bids to which he has just referred; Resp. Ex. 1023 A to S as company shipments from the La Salle plant and Resp. Ex. 1022 A to S as company shipments from St. Louis.

Q. I noticed on several of these lettings, Mr. Fellows, you have submitted bids both from your LaSalle mill and from your St. Louis mill. What was the purpose of that?

A. There had been an attitude displayed by the Illinois Highway Department rather favoring the Illinois mills; at least, we felt that way. So we wanted to put in a bid from our LaSalle mill for shipment from a mill within the State. At the same time the mills from without the State also had certain recognition, so we also wanted to submit a bid from our St. Louis mill with the thought in mind that we could link up the capacity, the combined capacity of the two plants, because our past experience had been in making these awards, certain consideration had been given by the Highway Department to the capacity of the plants. In this particular letting we bid at all points for shipment from LaSalle. We bid at other points—only some points for shipment from St. Louis. What we had in mind was that if the attitude on the part of the

Highway Department prevailed alone in preference
25629 to the intrastate mills, that we would have a bid that would be fully considered. If, however, some of the outside mills were also going to be given consideration in the award, we would have our outside mill and would hope to be treated in the same proportion that the outside mills might be.

Q. Do you know whether or not any award was made on this February, 1933, invitation?

A. There was no award made on that.

24630 (RESP. EXS. 1022-A to 1022-S, and 1023-A to 1023-S, both inclusive, were offered and received in evidence.)

Q. Mr. Eellows, I wish to call your attention to another Commission exhibit bearing the number of
15631 1890, being an Illinois Highway Division letting opened on March 27, 1923.

A. 1933.

Q. 1933. Excuse me.

This Commission exhibit indicates that your company bid on this letting. Do you recall the circumstances under which that letting was made?

A. Well, bids on the previous letting had been rejected, and they called for additional bids, another letting, and we bid on it. They held another letting, and we bid on it.

Q. Did you on the occasion of the new letting made up any new work sheets?

A. No, sir.

Q. You used the same one as before on Respondents' Exhibits 1021-A and B?

A. Yes, sir. We had found no changes in the commercial price out in the territory that affected the then basing point that we were using, so we used the same work sheet. We didn't make up a new one at all.

Q. And you said inferentially that you submitted bids. Did you submit the bid on this new letting?

A. Yes, sir.

25632 The witness identified Resp. Ex. 1024 A to U and 1025 A to S as two bids that Alpha submitted in the same way as it had the previous letting, and one is from Alpha's St. Louis mill and one from Alpha's LaSalle mill.

Q. Now, on page 13 of Respondents' Exhibits 1024-A to U, I notice there is a rider with respect to your Illinois sales tax, whereas on the other one I do not find any such

rider. You submitted them both at the same time. Will you explain that, please?

A. At that time there had been a so-called Illinois sales tax enacted, and there was no question about the application of that tax for shipment from our LaSalle mill which would mean intrastate shipment. There was, however, some question as to whether the application of that tax might be applied to mills shipping from out of the State. Consequently, there was an attitude on the part of the Highway Department to favor shipments from
mills within the State.

25633 There was a certain portion of Illinois we liked to ship from St. Louis, due to the better net it gives us, and, consequently, on the bid for shipment from St. Louis we attached a rider to the effect that any shipments resulting from this—I don't know just how it reads—this bid, why, we would pay the tax whether it was applicable or not. In other words, shipments would be treated the same way as shipments from LaSalle, as far as the tax was concerned.

The witness identified Resp. Ex. 1026 A to E as a mimeographed copy sent to Alpha by the Highway Department of Illinois, showing the various riders that were attached to competitors' bids, referring to this sales
tax matter. His recollection is, without reading
25634 them all over, that there was a variation as to the wording of the riders, but all to the same effect as to paying the tax to the State of Illinois on shipments in the State of Illinois, whether they were shipped out of the State or within the State.

Mr. Wooden: Your Honor, this offer illustrates and gives point to the previous objections, that here are two bids of the Alpha Company submitted in 1933, within a few weeks after other bids had been submitted by it, and I understood the witness to testify that these bids that I hold in my hand, which are pending, were the same bids, same prices bid, as those offered or bid by the Alpha Company a few weeks prior, and which have already been received, and I think, Your Honor, that they are objectionable as unduly cumulative, and I further offer what I have offered to do hitherto, to stipulate that the method
employed by the Alpha Company in submitting
25635 these bids in 1933, and thereafter, was the use of the lowest combination of base price plus freight.

Mr. Leisure: Well, of course, if that were all there was in this case, and the only thing that Mr. Wooden had charged in his complaint, and the only thing he had proved in his case, we would accept it; but since he alleges far more, many more things, in his complaint, and also has gone far beyond that in his proof, we cannot accept a stipulation of that kind.

Mr. Wooden: In so far as this offer goes to anything else, I would meet that on wholly different grounds, but I would like to know whether it does go to anything else.

Mr. Leisure: It is very clear that it does.

I might say that when Mr. Wooden suggests that these are the same bids, I want to point out that they are also the same prices which he introduced in evidence against us as showing collusion with our competitors.

Mr. MacIntyre: How does it modify the proof that is already in, if that is the case?

We just cannot understand it, Your Honor, please. Every time Mr. Leisure is asked by you, or anyone else here to submit some sort of a statement as to what he is intending and trying to prove through these exhibits, he always goes off on some tangent, back to some 25636 other bids last year or something else. He never comes to the point.

Trial Examiner Norwood: I think he has made it rather clear that he is putting these in to show the method of figuring these bids, and to show the surrounding circumstances which indicate why they made the prices in such a way, and indicate what they competition was, and so forth.

Mr. Porter: As a matter of fact, Your Honor, this exhibit is different from the former bids; this carries a provision as to absorption of tax which the others did not have.

Mr. Paulson: That is not different; that is merely a matter of distinction, because they still made the lowest combination of base price plus freight.

Mr. Leisure: And they all are different in—

Mr. Wooden: And they involve the use of different sheets of paper, Your Honor. That is a point that ought to be taken into account.

Mr. MacIntyre: Your Honor—

Trial Examiner Norwood: I think they might possibly dispense with putting in these larger exhibits here. They may have to be reprinted in the record, if it goes up, but

inasmuch as they are copies of the bids which are shown in your abstract, and that the Counsel for the Respondents have insisted on it, I shall receive them.

25637 Mr. MacIntyre: Your Honor please, it is no more additional as to showing what is taking place with respect to these bids than would be the case if Mr. Leisure brought in here a half bag full of Alpha cement and said, "This is the cement we bid on in this thing, and Mr. Wooden has put in a bid, and we ought to put in the cement,"—assuming, of course, you could not get all of the exhibits in any building in Washington, if he does that, and it is just about as ridiculous in one case as the other.

Trial Examiner Norwood: I think that Counsel's illustration is rather extreme.

Mr. Leisure: Of course—

Trial Examiner Norwood: The objection is overruled and the exhibits are received as marked.

(RESP. EXS. 1024-A to 1024-U, 1025-A to 1025-S, and 1026-A to 1026-E, both inclusive, were offered and received in evidence.)

Mr. Wooden: Your Honor, I would like to make the point as to just where the line will be drawn. If this Respondent can do this, I don't know why every other Respondent cannot do the same thing.

Mr. Leisure: We will cross that bridge when we come to it.

25638 Mr. Wooden: Yes, I know, we are coming to it all right.

Trial Examiner Norwood: I would not commit myself on that point.

Mr. Wooden: That is why I am so particular about this precedent that is now under process of being set.

By Mr. Leisure:

Q. Mr. Fellows, I want to address your attention to another Commission's exhibit bearing number 1892, it being an abstract of the Illinois Highway Department, showing bids opened on April 12, 1933. Their abstract indicates that your company bid on this letting.

Do you recall the circumstances of that letting (showing document to witness)?

A. Yes, sir; we submitted two bids at this letting also, one for shipment from St. Louis and one for shipment from LaSalle.

Q. Mr. Fellows, you say that you submitted two bids on this letting. Referring to Commission's Exhibit
25639 1892, was there any difference in the Illinois State Highway proposal in this instance from the ones that we have discussed heretofore, or, to be more specific, did they call for f.o.b. prices in this proposal?

A. May I look at these?

Q. Yes.

A. Yes, sir; they did.

Q. Are Respondents' Exhibits 1027 and 1028 the bids which you submitted on this letting?

A. Yes, sir.

Q. I show you a letter marked "Respondents' Exhibit 1029," for identification.

Will you identify it?

A. Yes, sir. It is a letter that I wrote to Mr. Coogan under date of April 6, 1933.

Q. With respect to what matter?

A. In connection with the changes in the Illinois proposal in these proposals and the one that had preceded it.

Q. Is the proposal represented by Commission's Exhibit 1892?

A. Yes, sir.

25640 (RESP. EXS. 1027-A to 1027-V, 1028-A to 1028-U, and 1029 were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Fellows, do you know how you determined the prices you quoted in this April, 1933, letting?

A. There had been no changes in the competitive situation; and we used the same work sheet we had used earlier in the year for the other two.

Q. You are now referring to Respondents' Exhibits 1021-A and B?

A. Yes, sir; 1021-A and B.

25642 Q. Mr. Fellows, I notice on page 12—will you turn to that page of your proposal of April, 1933, and you have inserted there an alternate "A" whereby you are invited to quote an f.o.b. mill price, apropos of what A. MacIntyre said. I have just made a statement that this was a new type of invitation. What is your experience with respect to that?

A. This is a new provision in the proposal.

Q. Yes.

A. This alternate "A" had not been in any previous Illinois proposal.

Q. Will you tell the Examiner what, if any, action you took with respect to that new provision?

A. In going over this proposal deciding whether or not we would bid on alternate "A," alternate "A" is the bidding of a price f.o.b. mill. Down at the bottom of
25643 alternate "A,", it states, "In addition to each price indicated above, the bidder shall prepay the freight charges from said mill to destination, which charges shall be included on the invoices covering each shipment."

Well, now, that was meant that if we quoted a mill price they would add on the freight from our mill to destination. We would have to prepay it, so it would cost them that much more, and we would be unable to meet the competition at destination where the State was going to use the cement, and where we wanted to be competitive. And had we quoted an f.o.b. mill price, well, we didn't just—we didn't know how to quote an f.o.b. mill price that would allow us to meet competition at destination points, because we would have had to have a different mill price for almost every destination in order to meet the variance in freight rates. So we did not bid an f.o.b. mill price.

Trial Examiner Norwood: Well, how did you bid that?

The Witness: That was an alternate "A."

Trial Examiner Norwood: Did you put in a destination cost bid?

The Witness: No, we bid our commercial price f.o.b. destination. Alternate "B" provides for a destination price, and we bid at all the points shown in the proposal, an f.o.b. destination price.

Trial Examiner Norwood: You didn't bid the
25644 mill price at all?

The Witness: We did not bid the mill price, no.

By Mr. Leisure:

Q. Mr. Fellows, I don't know whether you are familiar with this Commission's exhibit. If you can, I wish you would explain it. It purports to be dated April 12,
25645 1933, whereas it says at the bottom that it was made on January 10, 1933. Do you know anything about that?

A. Well, the bids were received on April 12, 1933.

Q. But it purports to have been made on January 10, 1933.

A. It purports on here to be made by T. M. H. Who that is, I don't know, on January 10, 1933.

Q. Do you know anything about that, then?

A. No, sir.

Q. All right.

The witness identified Resp. Ex. 1030-A and B as a letter that he had written in reference to the subject matter just discussed, that is, bids that had been taken
25646 by the State of Illinois in 1933; Resp. Ex. 1031 as a copy of a letter written by Mr. Kingery, at that time acting director of the Illinois Highway Department to Mr. G. S. Brown, president of Alpha. The letter referred to the same subject matter and to the extent that certain gentlemen were going to call upon him for certain purposes. I understand they subsequently did call upon him.

Mr. Wooden: Your Honor, we object to the pending offer on the ground that the costs of production of the mills is irrelevant and immaterial to the issues of this case, and on the further ground that this correspondence merely indicates that an offer was made and accepted to permit the State of Illinois to go into the costs of the Alpha Company, and if we are going into that much of the costs then we insist that the results of that cost study also go in and not merely the fact that the cost study of that sort was made.

25651 Trial Examiner Norwood: Now, this Respondents' Exhibits 1030-A and B, and 1031, for identification, I see nothing here except a statement that the Illinois authorities wanted to investigate the costs of this Alpha Company, presumably to determine whether or not they were making too much profit, and that the Alpha Company permitted the examination of their books.

25652 Is that all you want to show by that?

By Mr. Leisure:

Q. Mr. Fellows, did the State of Illinois' accountants come in and look at your books, apropos of 1030 and 1031?

A. Yes, sir.

25653 Q. Did they ever reject any bids that you made to the State Highway Department after those accountants made that investigation?

A. No, sir; I don't recall that any bids have been rejected.

The witness identified Resp. Ex. 1032 as a copy of a let-

ter written by him to Mr. Coogan, dated April 15,
25654 1933, referring to the same letting that had just been
discussed (Illinois State Highway Department).
The witness identified Resp. Ex. 1033 as an original telegram addressed to him concerning the same letting from Robert Kingery, acting director of the Illinois Division of Highways; Resp. Ex. 1034 as a copy of a letter, dated April 17, written by him to Mr. Coogan in connection with the telegram from Mr. Kingery, Resp. Ex. 1033; Resp. Ex. 1035 as an office copy of the telegram Alpha sent to Mr. Kingery in reply to his wire (Resp. Ex. 1033).

Mr. Leisure: I offer Respondents' Exhibits 1032 to 1035, inclusive, in evidence (handing the said documents to Mr. Wooden).

Mr. Wooden: We just make the objection that these pending offers are irrelevant, material and we hope that —that is, we assume, rather, that they are not duplicated by anything already in evidence. I remember papers of
that sort, but whether they went into evidence or not,
25655 I don't know.

Trial Examiner Norwood: What do they show?

Mr. Leisure: Well, I want to be entirely fair with the Examiner on this offer of this episode. It does not directly meet any direct charge in so many words that is in the complaint, but in studying it I have felt that it was relevant and material for this reason: There is a proposal by the State of Illinois to lease this plant, and these negotiations were carried on, and it looked favorable for a time as though it would be done, and then they realized that in doing that they would—this is the subject matter of the offer—they realized that in doing that they would entirely disrupt their dealer business. Now, frequently we have shown at other places in the case how important it was to keep our dealers. In fact, it has been stated frequently that the dealer trade is the life-line of the business of the manufacturer, and this very encouraging business opportunity here was turned down in order to retain the dealers.

Now, frankly, I don't think it does come within—it doesn't either directly deny anything in the complaint, or it doesn't directly confirm anything that we have put in our answers, but in studying it, it has seemed to me that it is material and relevant because it confirms what one
of our main contentions is, that the dealers are the
25656 life line, if you will, of the manufacturers' business.

and it was an episode that came along in their daily life during this time that they are being charged with having conspired. It does bear on that subject directly.

Trial Examiner Norwood: I do not believe that anyone will deny that the dealer trade is the backbone of the cement business. I do not think there is anything in the evidence to deny it, and there is much in the evidence to confirm it, and there are some figures and factual matter, so I think this is a rather roundabout way to establish something that nobody denies, and I think it might just as well remain marked for identification here, and let the Counsel put it in at some time that its relevancy appears in a greater degree than it does at this time.

I shall sustain the objection.

(The Trial Examiner having reference to Respondents' Exhibits, for identification, 1032, 1033, 1034, and 1035.)

By Mr. Leisure:

25657 Q. You have identified this series of correspondence and telegrams starting with Respondents' Exhibit 1032, Mr. Fellows. Do you recall the circumstances surrounding that episode? I mean, are you familiar with the proposed leasing of your plant to the State of Illinois?

A. Yes, sir.

Q. Well, now, without taking a lot of time on it, what finally was the reason that you did not lease as the State wanted to?

Mr. Wooden: I will make the same objection as to the irrelevancy and immateriality of the oral testimony.

A. They made this proposal to lease the plant, and we decided, after talking with Mr. Coogan, and so forth, not to accept the proposition, due to the fact that if we did that we could not take care of our dealer trade, because—

By Mr. Leisure:

Q. Without going further into detail, that is the main fact I wanted to establish.

Trial Examiner Norwood: Well, what percentage
25658 of your business is that dealer trade?

The Witness: I would say the dealer trade was probably around 80 percent.

By Mr. Leisure:

Q. Mr. Fellows, I call your attention to Commission's Exhibit 1878, which is a tabulation of bids to the Illinois

State Highway Department for the letting of March 25, 1936. Are you familiar with the circumstances under which your company bid at that letting (handing document to witness)?

A. Yes, sir.

The witness identified Resp. Ex. 1036 A and B as an original typewritten draft of the worksheet showing the destinations, the quantities called for, and the freight rates per hundredweight, but no prices shown on this exhibit.

It does indicate that the rates appearing hereon have
25659 been checked by the traffic department; Resp. Ex. 1037 as a copy of a letter written by Mr. Lindquist of Alpha's Chicago sales office to the St. Louis office in connection with this letting; Resp. Ex. 1038 as a copy of this worksheet covering this letting, with the delivered prices on the right hand side, some of them typewritten in and some put in with ink; Resp. Ex. 1039 A and B as the copy of this worksheet indicating that the prices have been checked, and this was the final copy of the worksheet that was used to make up this bid to the State. The red dots on Resp. Ex. 1036 A and B in front of the rates indicate that the traffic department has checked those rates from the railroad tariffs that they have on file.

Q. Now, I notice on the face of the document that in several instances that the figures were carried out to the third decimal; can you explain that?

A. That is due to a percentage increase in the freight rates that has become effective, resulting in these three and four decimal points—the rates per hundredweight.

Q. Now, what is this in the left-hand corner, the
25660 pencil writings on the same exhibit?

A. The pencil writing in the lower lefthand corner is in the handwriting of Mr. Whitmore, of the traffic department, and he calls attention there, and has these things marked, 1, 2, 3, 4, and so forth, and up on the left-hand side are similar marks, 1, 2, 3, 4, and so forth, which indicate that he has made corrections in these rates.

Are there any on the other side (indicating)—and there are a couple more on the other side.

Q. Now in your work sheet, Respondents' Exhibit 1038-A and B, some of those corrections are made in pencil?

A. Yes.

Q. And some are written by typewriting?

A. Yes.

Q. Can you explain that?

A. Those are not corrections that appear in ink. We sent a copy of this work sheet, a copy of Respondents' Exhibit 1036-A and B, down to our St. Louis office, and asked them to put in the prices that they figured for the destination points in the St. Louis territory. They did that and typed them in.

Q. Does that have to do with Respondents' Exhibits 1039-A and B, or 1038-A and B?

A. That has to do with 1038-A and B.

While this Exhibit 1038-A and B was being figured down at the St. Louis office, the Chicago office was also
25661 figuring the delivered prices on Respondents' Exhibit 1039-A and B. Then when 1038-A and B came back from the St. Louis office with their figures typewritten in, the figures that the Chicago office had figured were written in there with ink.

The reason that we sent this down to St. Louis from these various offices was for checking and for also last minute information as to what the competitive condition might be covering that territory which they—in that territory which they were covering.

Q. Now, I notice in this Respondents' Exhibit 1039-A and B, under the heading "Delivered Price," in this extreme right-hand column, opposite the destination Albion, A-l-b-i-o-n, in Edwards County, there is a figure of 55 out in the margin, and in the second sheet, beside this destination Carmi, C-a-r-m-i, in White County, is the figure 243.

What does that mean? What do both of those mean (handing document to witness)?

A. The figure 55 opposite Edwards County is in the handwriting of Mr. Smith, who, in checking these prices which had been previously worked out and put on here, figure 55, $2.55, destination price at Albion, Edwards County. We figured the price as based on Mitchel with a 2.10 base and 11.235 freight rate per hundredweight. That results in a delivered price of 2.53, which is shown in here. Mr. Smith, in figuring this, evidently overlooked the 11.235 and used the 11.77 from Alpha, the freight
25662 rate from Alpha, which would give him $2.55.

Q. On the reverse side of that same exhibit that you have in your hand, I notice there are some penciled figures. What do those indicate?

A. Previous to that, you had asked me about that 2.43 at Carmi.

Q. Oh, yes. You didn't explain the Carmi.

A. I can't explain how they got 2.43 except using 11.77, it gives—would make 2.55, but the 11.23 under Mitchell gives the 2.43 price, which is the correct price, and which we quoted.

Now, on the back of this sheet, the figures—the names are written here in Mr. Smith's handwriting. Mr. Smith attended this letting and evidently took this copy of his work sheet—of this work sheet with him and took down the information that was read off at the letting, and this is the information that he took down at that letting.

Mr. Leisure: I offer in evidence Respondents' Exhibits 1036, 1037, 1038, and 1039 (handing the said documents to Mr. Wooden).

Mr. Wooden: Your Honor, we object to these offers on the ground that they are unduly cumulative and show no difference in the method of figuring prices by obtaining the lowest combination of base price plus freight which has been the subject of voluminous evidence put in 25663 by both sides already in this case, and in that connection I call Your Honor's attention to the fact that cross-examination of the preceding witness, Mr. Postelle, after putting in a large number of these things, he was asked to point out any cases where they had done other than quote the lowest combination of base freight plus freight or a price derived therefrom, and he was unable to do so. I make that point here in connection with this evidence, which is now going in, that if it shows any departures from the method, regular method, we have no objection, but to just pile up instance after instance using the same method is useless.

Mr. Paulson: The only possible grounds on which this could be put in would be to impeach Mr. Coogan, their own witness, and they haven't shown any good reason for impeaching Mr. Coogan.

Mr. Leisure: Counsel seems to forget that we are only following in his footsteps; that every word he has said applies equally and with equal force to his exhibits, Commission's Exhibit 1878, put in by himself.

Mr. Wooden: Well, of course, I dispute that, Your Honor. A given thing may be material at one stage of a proceeding, and after it goes on and it is piled up and up,

no dispute about it on either side, it is no longer material, and that is just what is being done here.

Trial Examiner Norwood: Well, I think it shows
25664 throughout that it is either changed or else that there was no change.

Received as marked.

(RESP. EXS. 1036-A, 1036-B, 1037, 1038-A, 1038-B, 1039-A, 1039-B were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Fellows, Respondents' Exhibit 1040, your bid with respect to Commission's Exhibit 1878, can you identify it?

A. Yes, sir; it is our copy of the proposal and contract.

Q. Do you know whether any award was made, Mr. Fellows, on this letting?

A. Yes, there was. That is a copy of the contract. The contract appears in there also. I think there was 15,000 barrels awarded.

25665 (RESP. EX. 1040-A to 1040-V was offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Fellows, I now call your attention to another Commission's exhibit bearing the number 1879. This is a tabulation of bids received on March 30, 1937, by the Department of Highways of the State of Illinois. The Commission's exhibit indicates that your company was one of the bidders in that instance.

Are you familiar with the circumstances of that letting?

A. We bid at that letting; yes, sir.

25666 The witness identified Resp. Ex. 1041, A and B as an original copy of the worksheet that Alpha used in compiling its bid to be submitted to the State Highway Department of Illinois on March 30, 1937; Resp. Ex. 1043 A to U as a copy of Alpha's proposal and a contract with the State of Illinois for the furnishing of the amount, 18,000 barrels, that Alpha was awarded on that letting. At the bottom of each page on Resp. Ex. 1041 "you will find a dot" in front of all these freight rates that indicates the rates have been checked, and then on the bottom of both these sheets it states, "Rate OK, H.C.W., T.D. 3/25/37" which indicates that the rates have been checked by Howard C. Whitmore of the traffic department,

25667 Q. Now, without going into detailed questions and answers as to that work sheet, Mr. Fellows, was that prepared and used in the same manner with respect to this bid as the work sheets that you have described heretofore with respect to other bids?

A. Yes, sir.

Q. Do you know whether or not your prices on that were commercial prices?

A. They were. We only submitted one bid in this case. We had gotten down to the point where we only submitted one bid, a smaller amount of cement being called for, and we had received the sanction of the State Highway Department to ship in Southern Illinois from the St. Louis plant.

The witness identified Resp. Ex. 1042 as the original letter signed by F. L. Smith, Director of Public Works and Buildings, awarding Alpha 18,000 barrels as the result of this letting. When the witness says "this letting" he is talking about Com. Ex. 1879.

25668 Mr. Wooden: Your Honor, we make the same objection as to the cumulative character of these offers, the same as to preceding exhibits, and, in that connection, we again offer to stipulate that the method employed in all these cases was to use the lowest combination of base point price plus freight, that being the equivalent of the commercial prices that they were quoting at the time.

Mr. Leisure: I have nothing new to add to what I have already said on that, Your Honor.

(RESP. EXS. 1041-A, 1041-B, 1042, 1043-A to V were offered and received in evidence.)

By Mr. Leisure:

Q. I wish to address your attention to a Commission's exhibit, Mr. Fellows, bearing number of 1880 (indicating), it being a tabulation of bids on the Illinois Department of Public Works letting of December 28, 1937. This Commission's exhibit indicates that your company bid on that letting.

Are you familiar with the facts surrounding it.

A. Yes, sir.

25669 The witness identified Resp. Ex. 1044-A and B as the original office copy of the worksheet on which Alpha computed its delivered prices called for in this pro-

posal, and which it submitted on the letting of the Illinois Highway Department in December 28, 1937, "Government Exhibit No. 1880."

Q. Now, you will observe that the freight rates on this sheet are marked out, and new rates are inserted alongside of it. Can you explain that?

A. There are a few points here where evidently the traffic department in checking over these rates they found they were in error, and crossed out the rates that originally appeared, and wrote in the correct rate.

Q. You will notice that there are under the column headed "Delivered Price" certain changes apparently made at the destinations, where there have been some corrections of the freight rate?

A. Yes, sir.

25670 Q. What do those changes indicate?

A. The first change here is Clark County, Marshall, the county seat; that also shows a change in the freight rate from 10 cents to 9, under Langdale.

Q. Where you say the first one—look at the next one.

A. May I figure here just a moment? I want to see whether that changed the delivered price or not. I think it did.

(Witness figures on pad.)

The prices originally figure on 10 cents, Langdale, would result in a price of $2.48, using the 10-cent freight rate, and the Langdale base of $2.10, including sacks and discount. The change in the rate to 9 cents reduced that price to $2.44, so that it made a change in the delivered price.

Trial Examiner Norwood: Now, are you explaining what is in this exhibit that has not been offered yet?

The Witness: I thought it had been.

Mr. Leisure: Just identified.

The Witness: I beg your pardon.

The witness identified Resp. Ex. 1045 as an original letter from F. C. Smith, Director of Public Works and Buildings at Springfield, awarding Alpha 12,000 barrels as the result of the bids it submitted with this let-

25671 ting; Resp. Ex. 1046-A to P as a copy of Alpha's proposal and contract covering the amount awarded it as the result of this letting. By "this letting" he means to refer to Com. Ex. 1880.

25672 (RESP. EXS. 1044-A, 1044-B, 1045, 1046-A to X were offered and received in evidence.)

25674 Trial Examiner Norwood: Well, I do want to emphasize the fact that there is a limit to this kind of testimony. Unless you have some new points to bring out by them—

Mr. Leisure: I want to point out to the Examiner that the limitations in my opinion should be no more limited than they were with the Commission. The Commission did not show anything new every time they put in these exhibits, and I am following along faithfully in their footsteps and only putting in what they put in, and I think the rule should apply equally to both sides.

Trial Examiner Norwood: The Commission put in those to show that there was a number of instances of the same kind.

Mr. Leisure: That is right.

Trial Examiner Norwood: Now, I don't see why you can't meet it by showing in all particulars, as you have been permitted to, how they were made on one or two occasions, and then stating or stipulating that the same method was applied in meeting all the others.

Mr. Leisure: Couldn't the Commission have done
25675 the same thing?

Trial Examiner Norwood: What?

Mr. Leisure: Couldn't the Commission have done the same thing?

Trial Examiner Norwood: Yes. Yes, they could, but you didn't offer to stipulate.

Mr. Paulson: We did that, if Your Honor please. I don't think we have put in more than two hundred some bids, and we covered the whole country, as I said before. We have in our files instances of 2,500 identical bids, which we did not put in evidence, because we put in a sample to show the basing-point system and how it was used in the various sections of the country, and we stopped there in order to shorten the record, and not to burden these Respondents with a prolonged defense.

Trial Examiner Norwood: There is no use of these Respondents putting in unnecessary matter here simply because the other side has found it necessary to show a repetition of this practice.

25679 By Mr. Leisure:

Q. Mr. Fellows, you had already pointed out one change from the freight rates there under the column

headed "Delivered Price." And I have just said I would take the next one after the one you had explained,
25680 I want to direct your attention there to the freight rate opposite Sycamore in DeKalb County.

Do you find it there?

A. Yes.

Q. The same explanation applies to that as to the preceding one?

A. Not exactly, because the delivered price shown on this sheet here is—Respondents' Exhibit 1044-A—is based on a combination of freight of 10 cents per hundredweight from Buffington to designation, and the Buffington base. The price remained the same, 2.48. The change in freight was from Limedale changing the Limedale rate from 13½ to 14½, so that change in freight did not affect the delivered price.

Q. What does happen, then, when you apply the base of LaSalle to this destination of Sycamore, in DeKalb County?

What is the result in delivered price?

A. LaSalle. If we had used our LaSalle base of 2.20, which includes sacks and discount, and our freight rate of 9½ cents per hundredweight, or 36 cents per barrel, our delivered price at Sycamore, DeKalb County, would have been $2.56, whereas the competition which we had to meet was on a base from Buffington, and their rate of 10 cents per hundredweight which created a price of 2.48.

Q. Can you tell us whether the result at Taxton in Ford County where the freight rate from Marquette
25681 is changed, where that affected your delivered price?

A. The change in the freight rate for Marquette from 14½ to 15½ did not change the delivered price, as that point was based on Buffington at $2.10 plus freight rate of 10½ cents per hundredweight.

Q. Now, perhaps I should have asked you this with respect to each one of these—

Trial Examiner Norwood: Let me see that work sheet just a minute.

(Counsel hands Respondents' Exhibit 1044-A and B to the Trial Examiner.)

Trial Examiner Norwood: Respect this work sheet, Respondents' Exhibit 1044, did that illustrate the method that you have since employed in making all of these prices?

The Witness: Yes, sir; I think it does, Examiner, yes. You are referring to the commercial business?

Trial Examiner Norwood: Yes, any business.

25682 By Mr. Leisure:

Q. Mr. Fellows, perhaps I should have asked you this question with respect to each one of these exhibits, since the Commission found them sufficiently important to put them in; but to save time I am going to group them together—as on Commission's Exhibits 1899, 1191, 1884, 1886, 1888, 1890, 1892, 1878, 1879, and 1880.

Did you have any contact with your competitors, in any way, which would influence—or for the purpose of influencing—your price at those lettings?

A. No, sir; we did not.

Q. There has been considerable testimony here, Mr. Fellows, with respect to the use of the Institute freight rate book. Was it your practice to use the freight rate book of the Institute, right or wrong?

A. We used the freight rates that we got from our traffic department. They took their rates from the tariff file that they have. While the Institute was furnishing freight rates, they may have worked with them and
25683 gotten some of the rates from them also, but our sales department uses the rates which the traffic department furnishes them, Institute or no Institute. That is one of the instances why these work sheets all went back to the traffic department to be checked.

Q. Now, I asked you about the prices, Mr. Fellows, that you used with respect to these Commission exhibits that I just referred to.

I want to ask you also whether or not you had any contact in any way with your competitors which influenced you as to what base you would use?

A. No, sir; the base that we used we obtained entirely—that information we obtained entirely from the reports we received from our salesmen in the field, dealers, and so on and so forth, from which information we derived or deduced the base being used.

Q. Mr. Fellows, the Commission has offered in evidence here a group of lettings made on which your company bid in the State of Indiana. Perhaps we can group those in some way to save time, but I want to ask you about

this first one, Commission's Exhibit 1877, which is a tabulation of bids received by the Indiana State Highway Department on April 23, 1929. This Commission's exhibit indicates that your company was one of the bidders in that letting.

Are you familiar with the circumstances as to that letting (handing document to witness)?

25684. A. Yes, sir.

The witness identified Resp. Ex. 1047-A and B as Alpha's original worksheet that [was] made up in the Chicago office for use in bidding on the State of Indiana Department in 1929. It does not bring out as definitely, as some of those other Illinois worksheets do, as to what the lowest combination of base plus freight was, but the rates are all on here, as well as the bases. It is the

25685 worksheet that Alpha used in submitting its proposal with respect to Com. Ex. 1877; Resp. Ex. 1048 as a letter from A. D. Staples, Alpha's district sales manager in its Battle Creek, Michigan office; Resp. Ex. 1049 as a copy of the proposal that Alpha submitted to the State of Indiana at this letting covered by the "Government Exhibit 1877". Mr. Staples was Alpha's district sales manager at that time in an office that it had at Battle Creek, Michigan.

Q. What, if anything, did his letter have to do with the prices you were quoting on this particular letting?

A. From our Battle Creek office, the mill at Bellview, at that time, we shipped into the northern part of Indiana, and Mr. Staples had jurisdiction of our sales efforts in the northern part of Indiana, a very methodical man, and so forth, and we sent this work sheet over to him to check, not only to check our computation but also to give him the latest information as to competitive conditions in the northern Indiana field.

Trial Examiner Norwood: That report you received from him?

The Witness: Yes, sir.

By Mr. Leisure:

25686 Q. Do you notice some erasures there on the face of that work sheet in the "Delivered Price" column?

A. This is the work sheet that we sent to Mr. Staples

for checking, and as he checked it he put his initial "S" all the way down in front of the prices.

Subsequently when it came back to Chicago that "S" was rubbed out on the first sheet, and was not rubbed out on the second one, and it shows very distinctly on the second sheet,—that Exhibit 1047-B.

Q. Now, there are some pencil circles drawn there around certain freight rates (indicating); do you know what they indicate? Were they used in any way in your proposal?

A. The circles—one or two circles around the freight rates, and most of the circles around the figures, indicating mill nets derived.

Q. Yes.

A. Those were—those marks were put on there by Mr. Staples, and are referred to in his letter, in Respondents' Exhibit 1048.

Q. Now, going back again to your column headed "Delivered Prices," have you got it? Do you see it?

A. Yes, sir.

Q. There are three prices with lead pencil—with a red line drawn through them, in places,—what does that indicate?

A. Those are points where competitive compan-
25687 ies had mills, at which we did not quote at this letting.

Mr. Leisure: I offer the work sheet, together with the proposal, being Respondents' Exhibits 1047-A and B, 1049-A to T, and also the letter which the witness has described from Mr. Staples, being Respondents' Exhibit 1048, in evidence (handing documents to Mr. Wooden).

Trial Examiner Norwood: Was that work sheet any different from the other work sheets? I mean, does it illustrate any different method of figuring prices?

Mr. Leisure: Were you speaking to me?

Trial Examiner Norwood: Yes.

Mr. Leisure: I did not hear you.

Trial Examiner Norwood: Read the remark.

(Last remark by Trial Examiner read by Reporter.)

Mr. Leisure: From Mr. Wooden's viewpoint, I suppose you would say that it did not, because he has frequently objected on the ground that the same method of using the combination was used.

25688 From our standpoint, it is totally different. The Commission has not only charged a general con-

spiracy, but they have charged that specific acts went to make up the conspiracy. In other words, it is just as if they charged a series of robberies on different dates, a series of narcotic sales, if you will, on different dates, by narcotic addicts, peddlers, a series of speeding by traffic officers on different dates.

Now, for them to say, as Mr. Wooden has repeatedly said here, that what we did on different dates was the same method, that would simply say that we used the same make of automobile—

Trial Examiner Norwood (Interposing): I know, but I am just asking you this—

Mr. Leisure: (Resuming): —the same gasoline—

Trial Examiner Norwood: —about this work sheet, and what it illustrates. You may put in testimony as to each and every bid. You have a right to do that, but the testimony as to the manner in figuring out these prices from these known freight rates, and these known prices, and these prices in the field, I see no reason of illustrating that further, because this witness spoke with regard to that last one, that that illustrates the method of figuring all of them since that time.

Mr. Porter: Your Honor, this particular bid 25689 happens to be one in which there is a new piece of evidence as to our effort to ascertain the lowest price that any competitor was going to bid—might bid in order to enable us to compete and to meet the lowest price. Now, I do not understand that even the Commission's attorneys can say that it is an illegal thing for us to compete to try to meet the lowest price that we find in the field.

Trial Examiner Norwood: I am just asking you how this work sheet is different from the previous sheet.

Mr. Porter: I think that the exhibit—the whole picture of this bid is a little different in that respect.

Trial Examiner Norwood: Well, how? That is what I am trying to find out. What makes it different?

Mr. Porter: Because it shows the sending of this work sheet to Mr. Staples, who was on the ground in that particular part of the territory and knew the comparative condition in that territory to see whether there was anything in the Chicago office information that wasn't checked with the latest information on the prices found in the field.

Trial Examiner Norwood: Now, what does that prove?

Mr. Porter: It proves that we are competing, that we are in good faith competing in meeting the lowest price we found in the field.

Trial Examiner Norwood: How does it prove that?

25690 Mr. Porter: Well, I don't know what I can say to make it stronger than that. We send out our man in the field and say, "What prices do you find in the field? Are they different than those that we have a record of to date?" He writes back, and after he checks it over, he says, "I think this is wrong and that is wrong, because these are a little different."

Trial Examiner Norwood: Has anybody ever disputed that you do that?

Mr. Porter: I understand that the Commission's attorneys do. If they don't, I don't see what there is to this case.

Trial Examiner Norwood: You have said that heretofore, and the witness on the stand, that this illustrates the method that he has been making on all his business. Now, why put in another illustration of that? Why cumulate this thing? There is a limit, you see, to good nature.

Mr. Porter: I agree, Your Honor, that the Commission has cumulated in all these hundreds of bids that they put in.

Trial Examiner Norwood: We are not talking about their cumulations. You had considerable to say about those, and I did, too.

Mr. Porter: It is our duty as long as those ex-
25691 hibits remain in to meet the Commission's evidence as to each bid that affects the Alpha Company.

Trial Examiner Norwood: You can meet that evidence by—you can meet it by any factual matter.

Mr. Porter: And that is what we are doing.

Trial Examiner Norwood: Factual matter that is relevant.

Mr. Porter: Relevant factual matter—

Trial Examiner Norwood: And not cumulative evidence as this is getting to be, has been for some time, but I have been letting it in.

Mr. Porter: I think that the Commission's exhibits—

Trial Examiner Norwood: I am asking you to show me a difference, and you haven't shown me yet.

Mr. Leisure: Well, as to that, may I just say a word, Your Honor?

Trial Examiner Norwood: Yes.

Mr. Leisure: I have two things in mind with respect to that: First, that we say that each one of these stands on its own bottom, and it is impossible for us to say that they are the same. The second is, that even if they were identically the same, since the Commission has put it in as a separate charge, we have a right to meet it.

Trial Examiner Norwood: But since this witness
25692 has said that he employed the same method, there is no use of going ahead now and proving by documentary evidence that they employed the same method.

Mr. Leisure: But my point on that is that if the Commission or if some other governmental body had charged us in any proceeding with having entered into a gigantic conspiracy in which we over a period of 365 days exceeded the speed limit, to say that we were not allowed to prove what we did on any particular day because we used the same automobile, since we put in evidence of that automobile, would deprive us of showing any defense on the particular day in question, and I am saying that on any one of these bids—

Trial Examiner Norwood: Any particular defense, but if you show that at the first you did the same thing on every day of the year, then would you insist on sitting there and having the witness repeat over and over and over the exact testimony for every day in the year? That is what you are doing.

Mr. Leisure: If we have any defense for each one of these bids—

Trial Examiner Norwood: That is different.

Mr. Leisure: And that is what we are attempting to put in. We say that each of these bids stands on its own bottom just as the man driving in the car, although
25693 it is the same car, he might start out on a different day and go to different places, and so forth.

Mr. MacIntyre: If Your Honor please—

Trial Examiner Norwood: Well, wait just a minute.

Mr. Leisure: I think it is necessary for us to meet the specific charges. They are specific charges, and to say that we can't—

Trial Examiner Norwood: We are not disagreeing about that, and Counsel knows what I am talking about. There is a limit to our time here, to our patience.

Mr. Leisure: What I had thought—

Trial Examiner Norwood: If you have anything to offer that will add to what has already gone before, you may offer it now, but I am not going to waste my time with these needless and unnecessary repetitions, which all the counsel present know is being done.

25697 (RESP. EX. 1049-A to 1049-T, inclusive, was offered and received in evidence.)

25700 Mr. Leisure: Well, now, if Your Honor pleases, with respect to this one, then, Respondents' Exhibit 1047-A and B, and also Respondents' Exhibit 1048, we offer to prove by these documents that the prices were arrived at by independent action on behalf of this company, and that not only the prices were arrived at by independent action but that the bases used were arrived at by independent action on behalf of this company and not by any contact or collusion with any competitors.

Trial Examiner Norwood: Now, how does that follow from anything in those two exhibits?

Mr. Leisure: Well, it shows exactly how they did

25701 arrive at them, and with the witness' explanations, where he has made certain marks and certain circles, where the work was actually done, either one of two things must have happened: He must have arrived at it independently in the regular course of business, as this record shows, or he must have been making a record at that time for no other purpose than to offer it in evidence some day if it were ever charged against him, because if this is true, if anyone believes that this record is an actual record made in the regular course of business by a company, then it definitely and irrevocably destroys the charge that they arrived at this by collusion with someone else.

Trial Examiner Norwood: I have looked very carefully at that and I don't think that anything could be inferred from that that couldn't be inferred from those which have previously been received. The inferences are identical with what could be drawn from those that have been previously received, and the witness has stated that the method in making all subsequent bids was the same as indicated by these that were previously received.

Mr. Wooden: Furthermore, Your Honor, let me say, that every one of these exhibits, the many that have been received over our objection, and the ones that you are just now excluding—every one of them show exactly what

is alleged in paragraph 5(a), (b), (c), and (d) of
25702 the complaint.

Trial Examiner Norwood: Well, that is a matter that Counsel may argue, and the other Counsel has just as much to argue from without this present exhibit, which is now rejected, as he would with it, because it has all been tied up with what is already in the record.

Mr. Wooden: But this paragraph, Your Honor, simply sets forth the mechanics of the way these delivered prices are arrived at, and it is exactly the mechanics shown in these exhibits and by the witness' testimony.

Trial Examiner Norwood: Go ahead.

Mr. Leisure: I wish to continue with my offer, but with respect to what Mr. Wooden just said, the reason that the so-called method of figuring as shown by previous exhibits do not fill the bill is that Mr. Wooden has not only charged in his complaint that there was collusion as to method, but he has charged that the individual figures in this very work sheet, in this very letting, were arrived at collusively.

Mr. Wooden: Where have I charged that?

25703 Mr Wooden: I would like to know where and when and on what occasion I have charged that the figures on the work sheets were arrived at as the result of collusion in those particular figures.

Mr. Leisure: Well, I don't think we ought to take time with that. Mr. Wooden—

Mr. Wooden: No, I don't think so, either.

Mr. Leisure: —knows what I have reference to.

Trial Examiner Norwood: Will you admit that that was not the case?

Mr. Wooden: The other day, Your Honor, I said just the opposite, and I have always said the opposite, that the use of this formula or system makes it unnecessary for them to consult regarding the figures on the work sheets, or how to work out the formula. It is the formula itself that counts.

Mr. Leisure: I don't think—

Trial Examiner Norwood: I think in view of the Counsel's admission, that putting that in will not be necessary.

Mr. Leisure: But he is leaving his exhibit in
25704 evidence, in which he has sought to prove that these very figures in this work sheet were arrived at collusively.

Trial Examiner Norwood: His statement is very plain on that.

Go ahead.

Mr. Leisure: And I also offer to prove by this witness, and others, by oral testimony and by documentary evidence and by these specific ones in particular as to this particular letting, that the official tariff rates were used in making up—in submitting this letting and the practice was not followed as charged in the complaint, that they used the Institute freight books, right or wrong.

Trial Examiner Norwood: Now, there is nothing in these exhibits that would show what you say in there.

Mr. Leisure: Every—

Trial Examiner Norwood: Just point it out to me. Point it out to me, what it is.

Mr. Leisure: Every freight rate on these documents, the witness has testified, and is prepared to testify in the future, as to other lettings offered by the Government that those freight rates were taken from the official tariffs and not from the freight rate books.

Trial Examiner Norwood: He has already testified to that and it is in the record.

25705 Mr. Werle: Not as to this.

Mr. Leisure: As to the freight rates, as far as we have been allowed to go, he has testified to that.

Trial Examiner Norwood: Yes, he has testified to all of them.

Mr. Leisure: No. No.

Trial Examiner Norwood: Can you make that statement as to all of your freight rates?

The Witness: That they have been checked over by our traffic department and arrived at from the official tariffs?

Trial Examiner Norwood: Yes.

The Witness: Yes, sir.

Mr. Wooden: That is not quite what Mr. Leisure said.

Trial Examiner Norwood: Well, read Mr. Leisure's statement.

25706 "Every freight rate on these documents, the witness has testified, and is prepared to testify in the future as to other lettings offered by the Government that those freight rates were taken from the official tariffs and not from the freight rate books."

Trial Examiner Norwood: Now, you may bring that out by the testimony of this witness.

Mr. Leisure: I offer this document as a fact, with the explanation of the witness, showing how they did arrive at those prices, those freight rates which are listed, and which are used in the bid in this instance.

Mr. MacIntyre: Well, then, if Your Honor please, we object to that offer on this ground: That it is rank hearsay, that the correctness of the rates cannot be taken, because it would be hearsay. The witness does not know, and cannot vouch for the absolute correctness of it. He did not put it on there. Let us bring the man in who prepared it, and if the witness prepared it, and can testify as to whether this particular rate is correct, let us have his testimony on it.

Why beat the devil around the stump the rest of the afternoon on that question?

25707 Mr. Leisure: Why we cannot—

Trial Examiner Norwood: Let Counsel finish his statement.

Mr. Leisure: We cannot get two witnesses on the stand at the same time. I said we were prepared to show that fact from this witness.

Trial Examiner Norwood: Yes.

Mr. Leisure: And other witnesses, and that they would so testify if we were allowed to offer this exhibit, and it could be so explained.

It is necessary for us to have this documentary evidence in the record in order that the witnesses can testify orally explaining it. This represents this documentary evidence, and I take this bid only at the moment, Respondents' Exhibit 1047-A and B, and Respondents' Exhibit 1048, with the explanation of the witness, which explains how the prices that went up to make up this particular bid were arrived at, and it shows that they were arrived at independently of any other company, and they also show that the general method of arriving at their prices was not the result of any collusion with anyone.

Trial Examiner Norwood: Well, I shall permit the witness to refresh his recollection from any of those documents, and they are marked for identification there, so that the Commission, and the courts, may judge for

25708 themselves as to whether it proves any of the things which you have stated, and where it contains any feature over and above what has already been shown abundantly in the record. As a matter of saving time,

Mr. Werle: In that connection, Your Honor, may I point out just one thing?

I don't know whether you recall the testimony of some of the Government economists—

Trial Examiner Norwood: Yes.

Mr. Werle: —but I would like to call your attention to one or two excerpts from their testimony, which I think have a direct bearing on this whole subject matter here.

Trial Examiner Norwood: Let us not take up any other subject.

Mr. Werle: But it is not—it is this very subject.

Trial Examiner Norwood: Well, we are considering these two or three papers here, whether or not those papers add anything new to what has already been received, to the same tenor and effect.

Mr. Werle: Well, we don't seem to be able to agree on what we have shown by the papers that we have put in.

Trial Examiner Norwood: Now, I have already made a ruling on them, and you save that for the Commission.

Mr. Werle: All right.

25709 Trial Examiner Norwood: Proceed.

Mr. Leisure: As Your Honor has said, I might ask this witness and have him refresh his recollection from these, and testify, if I am able to prove any of these things that I have suggested—

Trial Examiner Norwood: If you ask something that is relevant and material to this issue.

Mr. Leisure: Yes.

Trial Examiner Norwood: But the manner of figuring these things out from these known factors, is hardly any part of the case that might be considered relevant and material. I think it would be cumulative. But you ask your questions and we will rule on them.

Mr. Leisure: Yes. I wanted to explain—

Trial Examiner Norwood: But I do not want to waste any more time on your method of figuring these things, as long as they are the same that you have already shown.

25711 By Mr. Leisure:

Q. Mr. Fellows, the Commission have offered in evidence a tabulation, which is Commission's Exhibit 1876, that being the Indiana State Highway Commission letting of November, 1929. Did your company bid on that letting (handing document to witness)?

A. Yes, sir.

Q. Are you familiar, Mr. Fellows, with the circumstances which led up to your submitting a bid in that case?

A. Yes, sir.

Q. Did the bid emanate from the office in which you are the sales manager—

A. Yes, sir; the Chicago office.

The witness identified Resp. Ex. 1050 A and B as a worksheet covering the submission of Alpha's bid to the State of Indiana on their letting of November 19,
25712 1929; Resp. Ex. 1051 A and B as a typewritten copy of which this is a longhand copy (indicating); Resp. Ex. 1052 A and B as another typewritten copy for carrying additional information; Resp. Ex. 1053 as Alpha's office copy of the bid it submitted to the State Highway Department of Indiana on this letting, referred to in Com. Ex. 1876.

Q. Now, you seem to have three work sheets there, Mr. Fellows, covering the same letting; will you tell us what the difference is?

A. This first one, Respondents' Exhibit 1050-A and B, is the longhand tabulation, or computation, covering the points called for in this proposal, the rates as well as the prices were put in there, and checked, as is shown by the red dots opposite each rate, and then the prices were worked out, computed from the rates as checked.

Then, instead of having it in this particular form, we made it up in typewritten form, for further checking, and on the typewritten form indicated which mill made the lowest price based on freight plus base.

On the third copy, which was the copy handed to me for my use, I have shown on it the points that we would
bid upon in this proposal, and also indicated the
25713 points from which we would expect to make shipment, and indicated hereon the minimum that we would take on each one of the four mills that would be interested in this bid. Our four mills were interested in this bid.

Q. Now, on Exhibit 1050, is that the first one of the original sheets made up, 1050?

A. Yes, sir.

Q. What do the red marks on that sheet mean?

The Witness: The red marks indicate that the rates occurring hereon have been checked by our traffic department.

Q. Without going into any detail, do you know—what is your regular practice in the office in which you are in charge as to checking those rates by the traffic department? Do you know what they do?

25714 The Witness: Yes, sir. We have never figured on one of these work sheets in our office which we didn't refer to the traffic department for the checking of the rate.

By Mr. Leisure:

Q. What are the penciled notations on Exhibit 1051, if you know?

A. On 1051, on the side here, they indicate that these prices have been O. K.'d, checked over, and O. K.'d by A. W. L. That is Mr. Lindquist.

Q. And who is Mr. Lindquist?

A. He was a sales clerk—order clerk in the sales department in the Chicago office.

Q. Why was he doing that? What was his function with respect to that?

A. Because it was his function to start these things and get these things going and check these prices over and compute these prices for further checking and for ultimate submission to me as to what we would do on our bid as to where we bid and how we bid, and so forth.

25715 Q. I notice on this Commission's Exhibit 1876 it indicates that your company failed to bid a mill price?

25716 A. There is nothing in the bid to indicate that we bid a mill price.

By Mr. Leisure:

Q. What were the circumstances? Why didn't you bid a mill price?

A. We didn't know how very well to bid a mill price when we wanted to make shipments from four different mills, from our mill at Ironton to the southeastern part of Indiana, from St. Louis, Mo., for the southwestern part, from the northwestern part, from LaSalle, and the rest of it from Bellview. There is a provision in there for trucking, but we weren't in a position to quote on trucking

25717 because we weren't close enough to Indiana points.

Q. Now, do I understand you to say that these work sheets, 1050, 1051, 1052, were made up in the regular

course of business, as you have already described with respect to the other work sheets?

A. Yes, sir.

Q. And that you actually used them in submitting your bid, 1053?

A. We used them, but while the work sheets—while the work sheet shows prices for all destinations called for in the proposal, in our bid we did not bid at all destinations.

Q. But these work sheets, you have made these markings which do show where you bid?

A. Yes, sir.

Trial Examiner Norwood: Any figures that are in the work sheet—I mean, all the figures that are in the bid are shown on the work sheet and a great many more; is that right?

The Witness: Yes, sir.

25718 (RESP. EX. 1053-A to 1053-O was offered and received in evidence.)

25719 By Mr. Leisure:

Q. You have told us a moment ago, Mr. Fellows, that you did not bid in certain instances.

A. Yes, sir.

Q. Can you look at Exhibit 1050 to 1052, and refresh your recollection and tell us why you did not bid?

A. We did not bid at Bedford, Lawrence County, because Bedford did not give us $1.65 at Battle Creek, nor $1.50 at LaSalle, nor $1.40 at Ironton, nor $1.45 at St. Louis.

25720 We did not bid at Bloomingfield because that did not give us the $1.65 at Battle Creek, or it did not give us $1.50 at LaSalle, or it did not give us $1.40 at Ironton, or it did not give us the $1.45 at St. Louis.

We did not bid at Bloomington because that did not give us $1.65 at Battle Creek, nor $1.50 at LaSalle, nor $1.40 at Ironton, nor $1.45 at St. Louis.

Trial Examiner Norwood: Would that apply to all of these cases?

The Witness: That same information would apply to all the points that we did not bid because we observed a minimum of $1.65 at Battle Creek, and $1.50 at LaSalle, and $1.40 at Ironton, and $1.45 at St. Louis.

25723 By Mr. Leisure:

Q. Mr. Fellows, the Commission has put in two exhibits by number 1875-A and B, which are tabulations of the Indiana Highway Department bids opened in March, 1931, which shows that your company bid at that letting also (indicating).

Did you have anything to do with that letting, and are you familiar with it?

A. Are both of these the same letting?

Q. Yes, sir; it is A and B.

A. We bid on some points in this letting.

Q. Mr. Fellows, is Respondents' Exhibit 1056-A and B your work sheet on this letting, and was it made under the circumstances and in the manner you have testified to already with respect to other lettings?

A. Yes, sir.

25724 Q. (Indicating) I show you Respondents' Exhibit, for identification, 1055; what is that?

A. This is a salesman's report of the salesman that attended this letting at Indianapolis, covering this letting covered by Commission's Exhibit 1875-A and B.

Q. And did you use the information contained in Respondents' Exhibit 1055 in any other subsequent letting?

A. Why, we undoubtedly did. We tried to keep track of the competition that was being shown, or indicated by these various lettings, and using the information that we had in meeting what we felt was the competition at destination.

Q. Is Respondents' Exhibit, for identification, 1054-A to V, your bid in this instance (showing document to witness)?

A. Yes, sir; that is our office copy of the bid that we submitted at this letting.

25725 (RESP. EX. 1054-A to 1054-V, inclusive, was offered and received in evidence.)

25726 Mr. Leisure: When we recessed, Your Honor had just ruled on Respondents' Exhibits 1056-A and B and 1055, and I make the same offer of proof with respect to those that I have made heretofore—to save time I will leave it, if that is acceptable, in that form.

Trial Examiner Norwood: That is satisfactory.

Mr. Leisure: I assume from Your Honor's ruling that the ruling would be the same as to the rest of these work sheets by this company. I see no need of going through

unnecessary mechanical work in the courtroom for nothing. Therefore, if counsel want to stipulate as we did, I think, with regard to Mr. Postelle, that the work sheets would be identified by this witness as being the work sheets with reference to the bids introduced in evidence by the Commission—

Trial Examiner Norwood: As being similar to them.

Mr. Leisure: As to the highway—the State bids.

Trial Examiner Norwood: Yes. And as being
25727 similar to the work sheets heretofore offered?

Mr. Leisure: Yes. And if called upon to do so the witness would identify them and say that they were prepared under similar circumstances as to each of those bids. I think that would save our having the Reporter mark each and every one of them.

Mr. Wooden: We are perfectly willing to stipulate that the witness' testimony in identifying other work sheets would be similar to what his testimony has been regarding those already identified.

Trial Examiner Norwood: The Respondents have work sheets, similar work sheets, that cover all of these bids.

Mr. Leisure: And that he would so identify them. Well, I want the same exception, of course.

Trial Examiner Norwood: Oh, yes.

Mr. Leisure: I mean, the same offer of proof as to those.

Trial Examiner Norwood: The same ruling; the same exception.

25728 By Mr. Leisure:

Q. Mr. Fellows, with respect to the bids that I have already called to your attention, are you familiar with the other bids put in this case by the Commission in which your company bid? I am talking about the highway bids. Are you familiar with those bids?

A. Yes, sir.

Q. Well, now, as to those and the ones concerning which you have already testified, did you have any contact with any of your competitors in any way which influenced your price that you bid in any way?

A. We did not.

Q. And does the same answer apply with respect to the bases which you asked?

A. It does.

Mr. Leisure: In accordance with Your Honor's ruling,

I am now omitting all of the further State highway
25729 bids; but I would like to take up at this point the Commission's U. S. Government bids. I have reference to Commission's Exhibit 770, being a tabulation of bids received by the U. S. Engineer's Office at Chicago on April 2, 1929.

By Mr. Leisure:

Q. Mr. Fellows, did your company bid on that letting (handing document to witness)?

25730 A. Yes, sir; we bid on that.

The witness identified Resp. Ex. 1057 A, B and C,
25731 as a notice sent out by The United States Engineer's Office—Chicago, Illinois, March 22, 1929, covering work for the improvement of the river at Chicago, covering the requirements, specifications, and different items of the proposal covering this letting; Resp. Ex. 1058 as a copy of a letter Mr. Lindquist wrote to the District Engineer, United States Engineer's Office in Chicago, Illinois, under date of April 1st, referring to the contract, the result of this bid. If he said a contract, it is headed "Contract Form," but in reality it is Alpha's bid submitted at this letting.

Trial Examiner Norwood: Is there an office copy of your bid?

The Witness: Yes, sir. That is 1059-A and B.

By Mr. Leisure:

Q. Who had charge of this letting in your office, Mr. Fellows?

A. I did.

Q. How did you determine your price in this instance?

A. In this particular instance we bid our regular commercial price at Chicago, f.o.b. Chicago, for shipment from St. Louis, from the St. Louis plant with the allowance of the commercial freight from St. Louis.

Q. You say your regular commercial price. What
25732 was your regular commercial price in this case?

A. The regular commercial price in this case was the lowest price we found being quoted in Chicago, which was $2.45 a barrel, including cloth sacks, subject to 10 cents a barrel discount.

Mr. Leisure: I offer Respondents' Exhibits 1057-A, B, and C; 1058, and 1059-A and B, in evidence (handing the said documents to Mr. Wooden).

Mr. Wooden: We make the same objection to these offers, Your Honor, as to preceding exhibits, and in that connection we fully recognize that this relates to Federal Government business, but would say that Mr. Coogan testified fully as to how the Alpha Company handled Government business at this time.

Now, 1929, we know that they did quote the equivalent of an f.o.b. mill price by deducting commercial freight on Federal Government business. Later on, under the Code, and subsequently, that was changed.

That doesn't add anything at all or vary in any way the picture that has already been presented by exhibits, and by the testimony of the president of the witness' company.

Mr. Paulson: It is what the Government sought to prove, Your Honor. It is the same case; they are proving the same thing.

25733 Trial Examiner Norwood: Can't he corroborate the other witness?

Mr. Paulson: If he is corroborating the other witness, he is corroborating Mr. Coogan. It is just cumulative and superfluous.

Trial Examiner Norwood: Isn't that permissible for them to do that?

Mr. Paulson: Well, it is an agreed-upon fact, Your Honor. There is nothing in issue upon it.

Trial Examiner Norwood: What do you want to show here, Mr. Leisure?

Mr. Leisure: Why, I want to show the fact which I don't understand has been fully agreed upon. I think before we finish our case even Commission's Counsel will agree, but I don't believe we have quite reached that point yet, that we arrive at these prices independently and without collusion.

Mr. MacIntyre: If Your Honor please, the papers do not show any such fact as that. The witness can testify as to what his knowledge on that is, and we will take his testimony in the record as his having so testified. If that is what Mr. Leisure would like for us to agree to, he can do that.

Mr. Leisure: That is what we are trying to prove.

Mr. Wooden: But even there, Your Honor, the
25734 fact still remains that this was a commercial price with the commercial freight deducted and thereby arriving at the mill price—in other words, a derived mill

price from the commercial price, and the commercial price figured according to the regular method of the lowest combination of base plus freight.

Trial Examiner Norwood: Exhibit 1057-A to C is the invitation, is it?

The Witness: Yes, sir.

Trial Examiner Norwood: And 1059-A and B is the contract, short-form contract?

The Witness: The office copy of our proposal. It seems to be a contract form, short form, but it is our proposal.

Trial Examiner Norwood: Oh, yes.

The Witness: Of the bid.

Trial Examiner Norwood: Yes.

1057 should be A, B, and C.

Respondents' Exhibit 1059 does not seem to be any A and B there.

The Witness: No, it is just one copy; just one sheet.

The Reporter: There is a reverse side to it, Your Honor.

Trial Examiner Norwood: Yes, Respondents' Ex-
25735 hibit 1059-A and B.

Respondents' Exhibit 1058 is your letter to the District Engineer?

The Witness: Mr. Lindquist's letter, you mean? Mr. Lindquist's letter.

Trial Examiner Norwood: What does this letter show, Mr. Leisure, especially? Does it show anything that this witness cannot tell us about (handing to Mr. Leisure)?

(Mr. Leisure examines document.)

Trial Examiner Norwood: The objection is overruled as to Respondents' Exhibit 1057-A to C, and Respondents' Exhibit 1059-A and B.

(RESP. EXS. 1057-A, 1057-B, 1057-C, 1059-A, and 1059-B were offered and received in evidence.)

By Mr. Leisure:

25736 Q. The Commission has introduced into evidence, Mr. Fellows, an abstract of bids bearing a number, 785, it being a tabulation of bids received by the U. S. Engineer's Office at Memphis, Tenn., on June 11, 1931. The Commission's exhibit also indicates that your company bid at that letting.

Are you familiar with the circumstances under which you submitted such bid?

A. Yes, sir.

The witness identified Resp. Ex. 1060 A, B, C and D as the invitation from the War Department of the U. S. Engineer's Office, Memphis, Tennessee, asking for a bid on 240,000 barrels of cement.

The witness identified Resp. Ex. 1061 as an original letter written by Mr. Postelle to Mr. Moors, referring to the bid that Alpha might submit at this letting. Mr. Moors is Alpha's district sales manager in charge of the St. Louis office. This calls for certain delivery which was in Mr. Moors' territory under jurisdiction of the St. Louis office; Resp. Ex. 1062 A and B as a copy of a letter written "to" Mr. Coogan, dated May 13th "to" Mr. Postelle, southern sales manager, with further reference to this matter; and as to how Alpha might bid on it, the conditions referring to previous bidding, and the certain provisions called for in the proposal; Resp. Ex. 1063 as a letter, dated May 14th, written by Mr. Moors to him, with reference to this letting, stating that he had received certain information from the Birmingham office referring to the provisions, etc. on
25738 this letting. Mr. Moors was district sales manager in charge of Alpha's St. Louis office; Resp. Ex. 1064 as the tabulation of bids received at a previous letting by the U. S. Engineer's office indicating how competitors quoted at that letting. That was sent by Mr. Postelle to Mr. Moors, and subsequently on to him to guide Alpha in the making up of this bid. "We" referred to it and used it in making up that bid. What effect it has, he does not know; Resp. Ex. 1065 as an original letter, dated May 16, 1931, that he wrote to Mr. Moors in Alpha's St. Louis office, referring to this particular letting at this time; Resp. Ex. 1066 A and B as a letter signed by Mr. Bethune of Alpha's Birmingham office to Mr. Moors in its St. Louis office, subsequently sent up to the witness for "our" guidance in making up this bid on this proposal, giving information as to what had previously been bid at some lettings, and also enclosed land-grant rates from various competitive points to Cairo, Hickman and Memphis; Resp.
25739 Ex. 1067 as a letter signed by Mr. Wilhelms in Alpha's St. Louis office, dated May 22, 1931, addressed to him with further reference to how Alpha might bid on this letting; Resp. Ex. 1068 as another letter dated May 27, 1931, from Mr. Wilhelms addressed to him, with reference to towing charges that he had been able to get from different towing companies down in St. Louis to certain points,

all referring to this letting; Resp. Ex. 1069 as a copy of a letter from Mr. Ward, general agent of the Federal Barge Lines to Alpha's St. Louis office, attention of Mr. Wilhelms, referring to charges that he would make for certain work in connection with this letting; Resp. Ex. 1072 as a letter, dated May 29th, from Mr. Wilhelms to him, and further refers to getting offers from towing companies, etc., referring to this letting; Resp. Ex. 1071 as a letter signed by Mr. Bethune to Mr. Moors of Alpha's St. Louis office, dated May 27th, giving land-grant rates that pertain to the bids recently received; Resp. Ex. 1070 as a copy of the witness' letter that he wrote to Alpha's St. Louis office, dated May 28, 1931, with reference to Alpha's bidding on this letting.

25740 Q. Now, as I understand your testimony, all of this correspondence had to do with the Commission's exhibits—rather, had to do with the letting represented by Commission's Exhibit 783, is that correct?

A. It was a letter—

Q. That is the one you are talking about?

A. It was all taken into consideration as to how we might compute our prices—in the computation of our price as we quoted, as to how we quoted.

Q. How did you arrive at your price?

A. These—

Q. What I mean is, you have been identifying certain documents.

A. Yes, sir.

Q. Did they have anything to do with your arriving at your price?

A. They guided us in the arrival of our final prices we submitted; yes, sir.

Mr. Leisure: I offer them in evidence (handing the said documents to Mr. Wooden).

Trial Examiner Norwood: Answer the other question: How did you arrive at the price? How did you figure it out?

The Witness: We used all the information that was contained in these different papers, and so forth, and

25741 Mr. Coogan and I talked it over the telephone, and we finally decided to bid a price, $1.50 f.o.b. La Salle.

Trial Examiner Norwood: You did that after getting the rate, the land-grant rates of competitors and figuring out the lowest price that they had quoted in the field, and

applied that lowest probable land-grant rate which was your $1.50; is that right?

The Witness: What we were trying to work out, Judge—there were certain provisions in that proposal covering certain charges for towing and transferring, and so on and so forth.

Trial Examiner Norwood: Yes.

The Witness: And we were trying to work out a way that we might be competitive. We couldn't work out a way where we felt we could be competitive at destination, f.o.b. barge any place. We couldn't get the rates.

Trial Examiner Norwood: Before you did that you figured out the lowest price of the most advantaged competitor, didn't you?

The Witness: We tried to find out—

Trial Examiner Norwood: First, and then you figured on the barge to see whether you could meet it; is that right?

The Witness: That is right. We tried to find out what our competition was going to be. This called for a 25742 bid f.o.b.—

Trial Examiner Norwood: Yes.

The Witness: —or f.o.b. points, which was Caruthersville, and from there it had to be transferred and towed, and we tried to figure out some way whereby we might be competitive even on a land-grant rate or a commercial rate, or what not.

Trial Examiner Norwood: That is, you figured out whether or not by using these lower boat rates you could meet that lowest competitive price which you had found out obtained at that destination; is that right?

The Witness: And we figured that we probably couldn't be competitive that way, and we would have a better chance of being competitive by quoting f.o.b. mill.

By Mr. Leisure:

Q. Now, without generalizing, to answer the Examiner's questions specifically, Mr. Fellows—quite aside from these exhibits—can you tell him just exactly how you reached that price of 1.50 f.o.b. La Salle—entirely aside from these exhibits?

Trial Examiner Norwood: Yes.

A. I don't recall now just what we did to arrive at that price. I talked to Mr. Coogan over the telephone, and he finally told us to quote a price of $1.50 at La Salle on this proposal.

25743 Trial Examiner Norwood: And that was not in accordance with the figures you had made, was it?

The Witness: How is that?

Trial Examiner Norwood: It was not in accordance, in exact accordance, with the figures that you had made?

The Witness: Well, we had not—we had not made any particular figures up to that time. We had used all of this information—

Trial Examiner Norwood: Yes.

The Witness: —in trying to arrive at the figure, how we could be competitive by quoting an f.o.b. barge price, so we couldn't quite figure that out. So in talking it over, the conditions that existed with Mr. Coogan, and so forth, we decided to quote $1.50 at La Salle, decided that we would have a better chance at that figure.

25744 *Examination on Voir Dire by Mr. Wooden.*

Q. Mr. Fellows, in quoting—was it $1.50 f.o.b. mill—was that the figure?

A. Yes, sir.

Q. Did you derive that figure from your delivered price, —commercial delivered price?

A. (Referring to exhibits) I don't believe so. We figured that we would come nearer meeting the competitive situation, the competition that we felt that we had to meet, by quoting that $1.50 at La Salle.

Q. And you do not believe that you did it by deriving it from your delivered price?

A. No, not that I know of; not that I recall now.

25745 Mr. Leisure: That is the point I would like to direct my attention to, Mr. Paulson's argument.

May I ask the witness a question about that?

Trial Examiner Norwood: Yes.

By Mr. Leisure:

Q. Mr. Fellows, as to these Respondents' Exhibits 1060 through 1072, did you use those in any way in arriving at your price, or did you just call up Mr. Coogan and ask your price?

25746 A. Well, this was not all done in a minute, the decision to quote this price of $1.50. It was not all arrived at in a minute, or as the result of one conference with Mr. Coogan. In all of these papers it indicates an effort on

our part as to how we might quote and be competitive at the point of destination.

25747 Trial Examiner Norwood: I think he has explained that, but if there is any further explanation, let him make it.

These figures, the price determined by the method there, was not the final price adopted, was it (addressing witness)?

The Witness: These (referring to exhibits in hand)?

25748 Trial Examiner Norwood: Yes.

The Witness: We had not adopted any prices when we were using these.

Trial Examiner Norwood: I mean the figures, the final price that you used, was not the price that you figured out by that method, the method that is indicated in those exhibits?

The Witness: These exhibits show—1065—show that we were quoting a price f.o.b. mill at La Salle in the hope and figuring that he could get a better land-grant rate over the Illinois Central to Cairo, Ill., because we were on the Illinois Central, and so is Cairo, and the Illinois Cen-

25749 tral gives a considerable land-grant rate. We were trying to figure out some way to meet the competition at the destination.

25752 (RESP. EXS. 1060-A, 1060-B, 1060-C, 1060-D, 1061, 1062-A, 1062-B, 1063, 1064, 1065, 1066-A, 1066-B, 1067, 1068, 1069, 1070, 1071, and 1072 were offered and received in evidence.)

25753 By Mr. Leisure:

Q. Mr. Fellows, the Commission introduced an abstract of bids, Commission's Exhibit 785, covering the letting of the U. S. Engineer's Office at Memphis, Tenn., on October 15, 1931, and your company, according to the Commission exhibit, did not bid. Is that correct?

A. What are you referring to? That is not the right paper.

(Pause.)

Q. To save time, do you remember it offhand? Do you remember why your company didn't bid on that letting?

A. Yes, because we made up our mind that there wasn't any way for us to be competitive at the point of destination, calling for barge delivery, because we couldn't get the rates necessary to meet that, with the rates specified in

the proposal as to what the Government would figure in comparing the bid, upstream and downstream, and so forth.

Trial Examiner Norwood: That is, that if you met the lowest ruling price, that your net would be below
25754 your minimum: is that the idea?

The Witness: No, we didn't have that in mind. That we wanted to be—what we wanted to do was to be competitive and get as low a price as we could figure out at the point of use that the Government was going to use it. Well, we couldn't do that, f.o.b. barge, and these proposals called for an f.o.b. barge delivery. We tried various ways of sending—by shipping it down to Cairo on a land-grant rate with certain prices as stated in the proposal for transferring it plus certain charges also stated in the proposal from there to destination. We finally—it was—it all seemed to be set up for a different company that was more favorably located to make barge delivery than we were.

Trial Examiner Norwood: Go ahead.

By Mr. Leisure:

Q. Now, Mr. Fellows, as to Commission's Exhibit 790, which appears to be a U. S. Engineer's bid and tabulation thereof for Memphis, Tenn., which was opened on September 20, 1933, the exhibit indicates that your company was one of the bidders in that letting.

Are you familiar with that situation?

A. Yes, sir.

25755 Mr. Paulson: I think we should dispose with asking this witness to identify these papers, because he can only tell us what they purport to be on their face, and I don't think there is any question but what they are what they purport to be.

25756 Trial Examiner Norwood: You mean that you stipulate that they are what they purport to be?

Mr. Paulson: That he would testify that they are what they purport to be.

25757 Trial Examiner Norwood: He is proffering the papers marked as Respondents' Exhibits 1073-A to 1073-H, inclusive, for identification.

Mr. Leisure: Yes, sir.

And 1073-A to H is the Government proposal on this letting. And I offer also 1074, which is the tabulation prepared by this Respondent; 1075—I am merely stating

so the record will show what the number is—1075, being a letter from Mr. Postelle of this company in con-
25758 nection with the same matter; 1076, being a telegram from Mr. E. J. Moore to Mr. Coogan in connection with the same matter; 1077, being a letter from the witness to Mr. Coogan in connection with the same matter; 1078-A and B, being a letter from this witness to the District Engineer of the U. S. Engineer's office, in connection with the same letting.

The witness identified Resp. Ex. 1079 A to Q as computations used in the making up of Alpha's bid in this instance.

25760 *Examination On Voir Dire By Mr. Wooden.*

Q. Do all of these papers, beginning with Respondents' Exhibit 1073 running through 1078—do they all relate to one particular letting?

A. I believe they do. I haven't seen them, but I believe they do.

Mr. Wooden: May I inquire whether it is a letting about which evidence was offered by the Commission?

Mr. Leisure: Are you asking me, Mr. Wooden?

Mr. Wooden: Yes, please.

Mr. Leisure: Yes, the Commission's Exhibit 790.

Mr. Wooden: Unless they are offered for the purpose of showing a departure or deviation from the method of quoting on the basis of the lowest combination of base price plus freight, or a price derived therefrom, we object to them as unduly cumulative and unnecessary.

Mr. Leisure: Of course, from Mr. Wooden's viewpoint, his viewpoint would be that unless they showed a deviation from a conspiracy, then he thinks that they should
25761 not be admissible.

Trial Examiner Norwood: No, I don't think that.

Mr. Leisure: That would be [illegible]

Mr. Wooden: No.

Mr. Leisure: Now, I say that they show that there is no conspiracy, and, for that reason, they should be admitted.

Trial Examiner Norwood: Well, now, wait a minute. That is very general. I think I have a right to a more specific explanation as to the purposes of this offer. He

was not referring to conspiracy there, but he was referring to the formula of base price plus freight.

Mr. Leisure: That is right.

Trial Examiner Norwood: Now, are these offered to show that the price on that Commission's exhibit was arrived at by some other formula?

Mr. Leisure: No. And I might add to that that they are offered to show that cement was sold in this instance, and that they used certain bases in figuring their prices in this instance; but I am offering it to show—to meet a specific charge in the complaint.

Trial Examiner Norwood: Yes.

Mr. Leisure: And they recite in the complaint certain specific cases where they say we submitted identical prices as a result of collusion. Now, this is offered to
25762 show what we did in this instance on a specific charge, which we believe shows that we acted independently. That is what it is offered for. I can't make it any more definite than that.

Trial Examiner Norwood: The exhibit shows a method that is inconsistent with collusion?

Mr. Leisure: Yes, sir; I think they are very inconsistent with collusion; yes, sir.

Mr. Wooden: The question at issue, Your Honor, right here is not that but whether they show a method inconsistent with the method which has been admitted and proved here a thousand times in this case.

Mr. Leisure: They might be that. They might be the same.

Mr. Wooden: The method of calculation.

Mr. Leisure: The same method of figuring on the same bases, and the same ways of arriving at it, and they would be thoroughly inconsistent with any possible inference of collusion, and that is why they are offered.

25763 Trial Examiner Norwood: The Respondents al-
25764 lege that this is a method that has grown up in the trade that may be employed without any illegal cooperative or collusion, and the Commission asserts to the contrary. Now, I think that is the issue.

Mr. Leisure: That is the issue.

25766 Brooklyn, N. Y.,
October 26, 1939.

25767 A. M. FELLOWS thereupon resumed the stand and testified further as follows:

Trial Examiner Norwood: In the matter of the pending proffer, Respondents' Exhibits 1073 to 1079-A to Q, inclusive, I think that these might come in for the purpose of showing the method employed in figuring this particular bid, and the intercompany correspondence, and so forth. I hope that it will not be considered as a precedent. Other papers showing the same method might be considered cumulative.

25768 (RESP. EXS. 1073-A to 1073-H, 1074, 1075-A, 1075-B, 1076, 1077, 1078-A, 1078-B, 1079-A to 1079-Q, inclusive, were offered and received in evidence.)

25769 *Direct Examination (Resumed) By Mr. Leizure.*

Q. Mr. Fellows, Respondents' Exhibit 1076 is a telegram which says that you will call long distance about mileage, Government job.

Will you explain that telegram? What is it? What is it written in connection with?

A. In the Government proposal it called—or states—a definite amount that the Government will use in comparing bids received, a definite amount for towing upstream and a definite amount for towing downstream. Consequently, with that definite amount stated we thought it was very necessary for our information to get the correct mileage, not only from the point that we proposed to load from, but the point from which our competitors might load from, in order to have some idea as to what the competitive conditions were and the ultimate cost to the Government at destination.

25770 The matter of getting this correct mileage was of considerable difficulty. I had this matter up with Mr. Moors, in his office there, on various occasions; had several talks with Mr. Coogan also about it. We tried to get this mileage from various sources, not only from the railroads—while the railroads understood that it is

true that we were figuring on the mileage on the river, nevertheless we tried to get it from the railroads. We tried to get it from the U. S. Engineer's Office. We had official notification, or information, from Government Bureau, as to the official mileage from various points. We had a conflict between various Government agencies as to what the correct mileage was, and it became a matter where we just had to decide from the information that we had as to what mileage we would use in making up our bid.

Q. And that telegram is with respect to what—

A. That telegram—this telegram dated the 18th—and was just a few days before the bids were received and we were still working on what we would—what figure we would bid in our proposal, and trying to get the definite mileage that we would use,—and this telegram was notification from Mr. Moors that I would call Mr. Coogan in regard to the mileages that the information for which I had been able to receive.

Q. Now, in this Respondents' Exhibit 1074, Mr. Fellows, on the righthand corner there is a group of figures with a red line drawn around them. Will you explain that (handing document to witness)?

25771 A. Respondents' Exhibit 1074 is the copy that we made in our Chicago office of an abstract received from the Government engineers covering this letting. We made a copy and sent this on to Easton, to Mr. Coogan. On it, in addition to what the Government had on it, we put on here the mileage that we figured out the U. S. Engineers had used, and also put down the mileage that we had used in the compilation of the figures that we had used.

Q. Now, in the third, fifth, and eighth columns I notice you have also ringed them with red pencil,—in column 3, column 8,—what was the purpose of that? What do they represent?

A. I think—well, those were ringed—for instance, column 3 shows $14,715.12, divided by the cost per ton-mile, and the amount, 120,000 barrels, indicates the mileage used by the Government of 184.4 from Tyler Street, St. Louis, on a bid by the Missouri Cement Company.

And Column 5(a)(b), that is a price quoted by the Kosmos Portland Cement Company. "(a)" refers to provision with Government—in a provision by the Gov-

ernment of extra barges, that may be towed between Evansville and Kosmosdale, and so forth. And "(h)" refers to the provision due to elimination of emergency freight surcharge.

Down below that ring in blue appears the 10 cents, 15 days of delivery. That was a little bit different than we had quoted. We quoted 15 days of shipment or loading.

25772 In column 8 there are two figures ringed there, one of them the same as in column 3, which indicates the Government used a mileage from Cape Girardeaux to Cairo of 52 miles.

And down underneath there is the one in blue, 10 cents, 5 day delivery. This is a little bit different than ours. And the $244,149.60 is ringed, and I call attention to the difference between that figure and the figure resulting from our bid.

The column 10—well, maybe, column 9 is also ringed in blue down at the bottom, because that discount is a little different than we had quoted.

25774 Q. Had you finished explaining those figures, Mr. Fellows?

A. Column 8 of the bids submitted by the Alpha Portland Cement Company, where $14,770.98 was used by the Government indicates a mileage of 185.1 miles from Branch Street, St. Louis, to Cairo, Ill. We used 183.5 miles in the compilation—in making up our figures for the bid we submitted. It indicates very distinctly, very definitely, the mileage that we used, which was not the mileage used by the Government, and that was the information

25775 that we were trying to obtain, just what the official mileage was to these various points.

Q. I notice in pencil writing here in the righthand corner—what is that, if you know?

A. That is the handwriting of Mr. Coogan and states that had we used 184.4 our bid would have been lower by $128.54. We lost by $127.68 indicating the difference that the mileages made in the compilation of this bid.

Q. Will you explain what the importance of these mileage figures was to you at the time?

A. With the definite statement in the proposal that the Government for comparative purposes, comparing these bids as to which would be higher and which would be lower—with that definite statement as to what they

charged, it was very necessary that we try and obtain the same mileage that they would use in order to know what basis to bid upon.

25777 Q. Explain to us, Mr. Fellows, how you arrived at the price.

25778 A. All right.

We took the $2 f.o.b. Cape Girardeaux, to which we added the amount per barrel which the 3½ miles resulted in, which made a price of 2.03458 per barrel, as the competition we felt we had to meet. Then we took that price, and after arriving at the 183.5 miles that we used times the low 3.5, and changed it to a per-barrel charge, and deducted that from the 2.03458, which resulted in the price that we bid of 1.9125525, f.o.b. Government barge at the foot of Branch Street, St. Louis.

Q. And that is how you arrived at your bid price?

A. That was the price we bid f.o.b. barge. We also bid f.o.b. mill.

Q. What is the figure f.o.b. mill?

A. The figure f.o.b. mill is 1.962684, f.o.b. cars, LaSalle, Ill.

25779 Q. Have you explained fully where you got the mileages from Mr. Fellows?

A. I tried to explain fully our efforts that we 25780 made to try to get the mileage. We had mileages here and mileages there, and so forth, and finally determined to use the mileages as shown.

Q. All right.

Can you tell me, Mr. Fellows, as to these U. S. Government bids. I do not believe I have asked you about those, whether or not you had any contact with any of your competitors at all in any way which influenced the price that you bid?

A. No, sir; we did not.

Q. I mean by that, of course, as to asking them what they were going to bid, or in any way at all other than the knowledge that you have described before.

A. No, sir.

Q. As to picking up the prices and the determining of prices from them.

A. No, sir; we did not.

Q. There is a Commission's Exhibit 795, Mr. Fellows, which is an appraisal of bids of the U. S. Engineer's Office at Memphis, Tenn., on April 29, 1935. Are you familiar

with that bid, and did your company bid on it (handing document to witness)?

A. Yes, sir.

25784 The witness identified Resp. Ex. 1082-A as the standard Government form for invitation of bids and including the bid that Alpha submitted on this invitation, and the price Alpha bid on this is shown in the "Government's Exhibit 795", if that is the number; Resp. Ex. 1080 A and B as a notification of the chairman of the Code Authority with reference to the file price to the Government, destination cost at Cairo, Illinois; Resp. Ex. 1081 as a typewritten list of land-grant rates from certain pro-

25785 ducing points to Cairo, Illinois, together with some penciled computations which the witness made on the sheet himself, changing these land-grants from hundredweights into barrels, and using the filed price and deducting Alpha's land-grant rate in sacks and discounts as to what it would net it stripped at the mill. They are all with reference to Com. Ex. 795.

Examination on Voir Dire by Mr. Wooden.

Q. What is the source of the land-grant information contained on 1081, for identification?

A. The source of this land-grant information is from our traffic department, who obtained these rates from the railroad.

Q. Is 1081 related to the same bidding or filing 25786 as 1080 and 1082?

A. Yes, sir; it is related in this way, that down below here in my penciled figures I show the file price that is shown in 1082-A and work out our mill net from it.

Mr. Wooden: We have no objection to 1081, Your Honor.

(RESP. EXS. 1080-A, 1080-B, 1081, 1082-A to 1082-P were offered and received in evidence.)

Direct Examination (Resumed) by Mr. Leisure.

Q. Mr. Wooden asked you about a sheet there. I haven't got the number, 1081.

Explain what those computations are, if you know, Mr. Fellows.

A. The land-grant rates that we had received from Cape

Girardeaux to Cairo for this letting was .07169 per hundredweight. Down below I have computed .07169 times 380—times 3.8, which shows a land-grant rate of .272422 per barrel added to the base, which we were figuring at Cape Girardeaux at that time of 2.10, including sacks, and shows a resulting price of 2.372422, the same as shown in the filing indicated in Exhibit 1080-A and B. This was done to work back and check the competition that 25787 that price reverted from or arose from.

From that filed price we deducted our land-grant rate from LaSalle of .304, our land-grant rate from LaSalle to Cairo, Ill., .304 per barrel. The actual land-grant rate is shown up above from LaSalle to Cairo as .08 per hundredweight or 30.4 cents per barrel, and deducted that from the filed price at destination, which gave us a figure of 2.068422, from which we made a further deduction of 40 cents for sacks, which gave us a figure of 1.668422.

Trial Examiner Norwood: Now, isn't that the regular and usual way that you figure all these prices?

The Witness: Well, this latter part is going beyond the price and figuring out what we would get at our mill after sacks were deducted and discount deducted.

Trial Examiner Norwood: You are just determining your mill net from that. Don't you do that on all of them?

The Witness: I don't know that we do it on all of them. We try to find out what we are going to get at our mill on any of these bids.

Trial Examiner Norwood: Well, do you figure on this bid in any way different from what you figure on all bids?

The Witness: All bids of all kinds?

Trial Examiner Norwood: Yes.

25788 The Witness: Well, I wouldn't know without going over all the bids that we ever made whether or not there may have been some bids that we didn't do it on.

Trial Examiner Norwood: But usually?

The Witness: On this particular one we did.

Trial Examiner Norwood: Usually you figure it that way; isn't that right?

The Witness: We take whatever price we figure at destination—

Trial Examiner Norwood: Yes.

The Witness: —and deduct our freight rate, and so

on, and so forth, in sacks and discount, to find out what we get.

Trial Examiner Norwood: You do that in the case of every bid or every sale, don't you?

The Witness: I wouldn't say that we did it on every bid. I am sure we don't do it on every sale.

Trial Examiner Norwood: Do you do it on the vast majority of the bids?

The Witness: How is that?

Trial Examiner Norwood: Do you do it on most of the bids?

The Witness: Well, I would say that in all probability we work back to find out what we were going to get at our mill on any bids of any consequence that amounted to anything, because we want to know what we are going to
25789 get.

Trial Examiner Norwood: That isn't what I asked you. I asked you if you used the method that you have described to us there on most of your bids. Do you or do you not?

The Witness: I would say that we use this method when we want to find out our mill net.

Trial Examiner Norwood: Is that in most cases? Does that come about in most cases?

The Witness: Every bid that amounts to any—

Trial Examiner Norwood: Yes.

The Witness: —in any amount.

25790 Trial Examiner Norwood: I want to find out from either the attorneys or the witness if he is telling us anything new in his explanation of these exhibits, 1080 to 1082, inclusive.

Mr. Leisure: If Your Honor is addressing the question to me, our contention is and will be that every bid, everything we do, every figure, every period, every question mark is new.

Trial Examiner Norwood: I am not asking you that.

Mr. Leisure: In every bid, and so to that extent every figure on that paper is new.

Trial Examiner Norwood: Yes.

Mr. Leisure: And different from any other bid.

Trial Examiner Norwood: Every figure is different, but I am speaking of the method. Are you showing anything new in this method different from what you have already told me before?

Mr. Leisure: Well, the term "method" is so large and so all-inclusive that unless Your Honor defines
25791 "method" I can't answer that question.

Trial Examiner Norwood: In other words, I can't be told, and the Counsel can't make it plain to me, that he is bringing out something new, a new feature in this particular method of bidding?

25796 By Mr. Leisure:

Q. Mr. Fellows, there are a number of other bids here. I am not going to take the time to call them by number now, because the record will show what the numbers are, which the Commission has offered in evidence
25797 in this case, showing that your company bid on Government and public lettings.

Are you prepared today to testify concerning those lettings, and explain them in the manner that you have explained as to the bids that you have already testified to?

A. Yes, sir.

Mr. Leisure: That being the case, Your Honor, if Mr. Wooden wishes to stipulate regarding this proof, I am prepared to do it in the interest of saving time,—something to the following effect: That the witness may be considered as having testified as to other Government bids already in evidence, in which the Alpha Company bid, in similar manner to the manner which he has already testified as to the way in which the Alpha Company did bid, and producing the documentary evidence in support thereof.

Now, it has been pointed out to me by Mr. Wooden that in two instances he figured on barge rates.

Trial Examiner Norwood: Yes.

Mr. Leisure: Naturally, those would not apply to these bids, where the barges were not included.

Trial Examiner Norwood: Yes.

Mr. Leisure: But, if there is any point that the Commission wants to bring out with respect to that, they can take the bid and inquire from this witness—he is here on the stand—about any barge rates. I do not
25798 have any such exceptions in mind at the moment, and I will be willing, if such appear in the future, to modify the stipulation to whatever the facts should show with respect to that.

Is that agreeable?

Mr. Wooden: I take it that the documentary evidence which it is proposed to be stipulated, the witness could produce his documents of the same sort that have been produced and received regarding the other case.

Mr. Leisure: Well, I do not say that it is the same, Mr. Wooden, but it is similar.

Trial Examiner Norwood: Yes.

Mr. Leisure: It is the kind of testimony that we have been offering here for two or three days.

Mr. Wooden: There is no objection to accepting the proposed stipulation, providing it includes the two exceptions regarding the use of barge rates.

Trial Examiner Norwood: Yes.

Mr. Wooden: And I don't know the numbers of those—

Trial Examiner Norwood: Well, that is very clear.

Mr. Wooden: —the exhibit number.

Mr. Porter: It is my recollection—I may be wrong—but it is my recollection that we have put in all the evidence as to barge rates for the Alpha bids. There
25799 were a number of barge rates that the Alpha Company did not bid,—to explain why they did not bid, —but I do not think there are any more barge bids in which we took part that were not explained. Now, I may be mistaken, but that is my impression.

Mr. Paulson: What we have in mind, Your Honor, with regard to the documentary evidence, we have taken the position all along that it is incomplete and does not fully support the witness' testimony that they quoted entirely independently here. We agreed that they have similar documents to those already put in, but we do not agree that they bolster his testimony.

Trial Examiner Norwood: Well, nobody has agreed.

Mr. Paulson: —that they completely support his testimony.

Trial Examiner Norwood: Well, nobody is agreeing as to the ultimate conclusions from this testimony. They are just agreeing as to the evidentiary facts.

Mr. Wooden: Yes.

Mr. Paulson: Yes.

Trial Examiner Norwood: I think that is understood. Go ahead.

Mr. Leisure: And that testimony, Your Honor, does cover, as I understood it, the bids which affect this Respondent.

25800 Trial Examiner Norwood: Yes, all the bids that affect this Respondent.

Mr. Porter: Confined, Your Honor, to those made in the Chicago office, because those made by Mr. Postelle in the Birmingham office were somewhat different, and are already taken care of.

Trial Examiner Norwood: Yes, they are all taken care of.

By Mr. Leisure:

Q. As to that, Mr. Fellows, the Chicago office received bids, as you have told us, from Government departments, separate and distinct from bids being received in other parts of the country, at other offices?

A. Yes, sir.

Q. By your company?

A. Yes, sir.

Q. And I think you told us you had general supervision of the bids that came to the Chicago office?

A. Yes, sir.

Q. That they came under your direct supervision?

A. Yes, sir.

Mr. Paulson: I believe the words there should be "invitations to bid"; it may be confusing otherwise.

Mr. Leisure: Yes, "invitations to bid," yes.

25801 Q. I do not know that you told us with respect to the bids—before we leave that general subject—when you received invitations where no land-grant rates were involved at all, what your practice was in handling such bids?

A. Well, sometimes the Government calls for a price in their invitations f.o.b. destination. Where such bids were called for the local office that received that invitation would bid on that the lowest quoted price that we had found prevailing at that destination.

If there were no land-grant rates involved, now, if it was only a small amount, a car or two, they might do that without taking it up with me. If there was any considerable amount, they would. If there were any land-grant rates, or barge rates involved, they would, of necessity, have taken it up with me, and it would come through the Chicago office, the bid would be made up in the Chicago office under my supervision and instructions.

Q. And I think you already told us that where the land-

grant rates were not involved you used your commercial rate?

A. Yes, sir.

Q. What has been your experience there in receiving these various bids,—have the invitations in form been consistent, or have they varied? What has been your general experience?

25802 A. Well, some have called for a price f.o.b. mill; some have called for a price f.o.b. destination; some have called for a price f.o.b. destination and/or a price f.o.b. mill; some have called for a price f.o.b. destination and the provision made for the deduction of commercial freight.

Q. Have you followed any definite plan? For instance, have you quoted f.o.b. mill prices on some invitations—

A. We have at times. We have tried various methods. We have quoted f.o.b. destination; we have quoted f.o.b. mill; we have quoted f.o.b. destination cost, with the so-called control clause. Recently we have been quoting f.o.b. mill and applying—attaching the equalization clause, which I think Mr. Coogan referred to; whereby we would deduct the excess difference between the commercial rate and the land-grant rate between our bid and some competitor's bid that might have had a more advantageous land-grant rate.

Q. Now, when the land-grant rates are involved in any invitation, will you tell us whether or not you are concerned with merely the instances where there is a land-grant rate applying on the route or your own shipment only?

A. No, we want to know the land-grant rate from our competitors, too, because quite frequently the land-grant rates vary the same way the commercial rates vary, and it has been our experience that the Government doesn't take the f.o.b. mill bid but what it ultimately costs
25803 the Government at destination where they are going to use it.

Q. Mr. Fellows, the land-grant rates which you used, which you have told us about—where did you get your land-grant rates from, if you know?

A. The sales department, as Mr. Paulson has stated, received those land-grant rates from the traffic de-
25804 ment, but I know that the traffic department got them from the railroads, and in every instance that they could. Sometimes it was left to me to find out if I could

get from the U. S. Engineers what the land-grant rate was prevailing at such and such a destination. The salesmen in the field that attended these lettings also reported the land-grant rates that were used. We have picked these—this information not only through the traffic department, who got theirs from the railroads, but we picked them up from every source that we could find them from.

Q. Now, having gotten them from one source at one time, that brings up a point: Could you then rely on that same rate on future biddings, or was it necessary on each occasion for you to check the land-grant rates over again?

A. If there was some period of time, some period of time between a bid made today and another one made some other time, if there was two, three, four weeks, or a month, or several months, why, the rate might have changed—the land-grant rate might have changed, and we would call the railroads to find out what the land-grant was at that time. If there was a letting at the same point, as there have been, only a couple of days apart, why, we wouldn't go through that process; we would use the same land-grant rates.

Q. How long a period of time have you been experienced in dealing with these land-grant rates, Mr. Fellows?

A. Well, the first time that I ran across the use 25805 of land-grant rates was when I was in Spokane with the International Cement Company, along about in 1913, '12 or '13.

Q. Now, with respect to the use of these land-grant rates having obtained them, as you have already told us about, did your company, the Alpha Company, follow any single method with regard to quoting, or did it follow different methods with regard to using land-grant rates?

Do you understand my question?

A. Why, I think I do, Mr. Leisure. We have quoted this destination cost with the control clause, the destination cost being predicated upon the lowest cost to the Government, as we could figure it, by the use of land-grant rates. We have quoted a destination price with the allowance of the commercial freight. We have quoted at other times with the destination price, with the allowance of more than the commercial freight, in an effort to overcome the more advantageous land-grant rates that some competitor might have had.

Q. Was that the reason for following these different methods?

A. We have tried various methods in an effort to be competitive at the point of use where the Government—which the Government took into consideration as to what it was going to cost them, the ultimate cost where they were going to use their cement. That is where we wanted to be competitive.

Q. Well, now, as to these bids that we have stipulated about, and any of the other bids that you had any-
25806 thing to do with in your office, have you arrived at your prices, or at the method of figuring them as a result of any contacts of any kind with your competitors?

A. No, sir; we have not. The control clause, as I recall it, was first filed with the Institute, and that is the first time that we used it, after it was filed there with the Institute, the Code Authority, if that is—

Q. In your long experience in dealing with these land-grant rates, since you say 1913, what has been your experience? Can you tell me of any single occasion where the Government was deprived of its land-grant rate on any price that you made to them?

A. Not—

Q. The benefit of its land-grant rate.

A. Not when we quoted the destination cost and provided for their taking delivery or title to the cement at the mill. It is very obvious, I think, that when we quoted, called for and quoted the f.o.b. destination price, that then there was no land-grant involved; and they didn't get any advantage of land-grant rates, when the bids were called for in that manner. But where the control clause operated, they would get the advantage of the land-grant rates, and the competition resulting from land-grant rates. In other cases, we have deducted the commercial rate, and in doing that they took title at the mill, and the land-grant rate was applied and the shipments made on Govern-
25807 ment bills-of-lading. At other times we have given them, I think, more than the advantage of the land-grant rates in that when we quoted an f.o.b. destination price we allowed an amount greater than the commercial price or the commercial rate from our mill to destination.

25808 Q. Is it or is it not your testimony, Mr. Fellows, that where land-grant rates were involved, and where you bid, that you gave the Government the benefit of the land-grant rates?

A. Yes, sir; except where they called for bids f.o.b. destination, and no allowance—

Q. Were they entitled to any land-grant rate benefit when they called for f.o.b. mill bids?

Mr. Porter: No.

25809. A. F.o.b. mill?

If they called for a price f.o.b. mill, we bid f.o.b. mill, and they took title at the mill, and there was land-grant applicable to the point of destination, they were entitled to it, and got it.

25811 Q. Mr. Fellows, I want to call your attention to Commission's Exhibits 22 and 23 (indicating). They refer to certain meetings supposed to have occurred at Chicago, and at Detroit, in the fall of 1933, at which the subject of trucking in Michigan and Wisconsin was discussed. These exhibits seem to indicate that some representative of the Alpha Company was present at such meetings. I would like to call your attention to these—have you take these exhibits and tell us whether or not you attended those meetings (handing documents to witness).

A. Well, I remember having attended this meeting in Detroit.

25811 The Witness: Commission's Exhibit 22-A, B, and C, I guess (examining document)—yes; I remember having attended that meeting.

A. (Continuing.) The other exhibit, 23-A and B, I don't know whether I was at the meeting that Mr. Cree is talking about here or not. He speaks about a meeting lasting two days. I don't remember anything about a meeting lasting two days. I remember there was a meeting held in Chicago.

By Mr. Leisure:

Q. As to the meetings you attended, do you recall the circumstances under which these meetings occurred, Mr. Fellows?

A. Yes, sir.

Q. What were they?

A. Well, this meeting over in the Book-Cadillac Hotel was held in the latter part of 1933, when we were trying to get certain provisions into the Code, and we as car shipper over into Michigan, were very much interested in the trucking situation over there.

Trucking was being done over there direct to destination, and we, as car shippers, had no way of meeting that. What we were trying to do in this meeting was to talk over some provision that we might put into the Code so as to meet that competition over there, make it easier for us to meet, so that we could get a little more money out of it.

25813 Q. Now, there is another meeting referred to in those exhibits,—a meeting in Chicago. Tell us what you know about that.

A. Well, the meeting that I recall in Chicago certainly did not last two days, or even a day, so far as that is concerned, so I don't know whether it was this same meeting or not; but the meeting I attended,—and Mr. Cree of the Aetna Company was present,—we took up the same situation that prevailed in Wisconsin analogous to the situation in lower Michigan.

There was trucking going on up in Wisconsin, from both Milwaukee and Menominee, Green Bay and Menominee, and we were interested in that, and we were trying to work out the same kind of a provision applying to that territory, the competitors in that territory, to put into the Code that we were trying to do in this meeting over in the Book-Cadillac Hotel.

Q. Well, now, I noted that on both of these exhibits there was some trucking plan discussed as having evolved from these meetings. What actually happened,—was any plan with respect to trucking in Michigan or Wisconsin developed from either of these meetings?

A. No, sir; there was not, no plan, I didn't hear any plan offered at all, just a general discussion as to what might be done and what might be included, and what we might be able to get into the Code provision. I know of no plan.

Mr. Cree speaks of a plan here, and so forth, but I don't know, I never heard of it.

25814 Q. Now, in your experience, what happened after these meetings,—what did you find the situation to be in Michigan and Wisconsin? Had it changed in any way?

A. My recollection is that there was no change in the situation at all as far as trucking was concerned. We were interested at that time in getting provisions in the Code that would take care of the situation. My recollection is that there was nothing appeared in the Code when it did

come out, and subsequently, in order to meet that competition over there, we used—we used one of the buildings—one of the dismantled buildings in our Bellview plant as a warehouse, and trucked out of that, and have been trucking out of that ever since.

With reference to the Wisconsin situation, subsequently we opened a warehouse in Milwaukee and another in Green Bay, and trucked out of both of those places, and still are, in an effort to meet the trucking situation created by silos and warehouses of competitors who have silos and warehouses at those points.

Q. Now, without asking a lot of questions on both these meetings, let me see if I can sum it up, Mr. Fellows, and ask you one question:

Was there any understanding reached at either of these meetings that you were aware of at all, as to what might be done, or what should be done, or what would be done in the future so as to change this situation at Michigan and Wisconsin?

25815 A. No, sir; not at all.

Q. Did you personally ever discuss the subject of trucking at all with Mr. Cree?

A. No, sir; I never did.

Q. Either personally or on the telephone, or in any other way?

A. No, sir.

Q. Or by letter? Did you ever write to him about your own company, or about the Aetna policies, with regard to trucking, generally?

A. Never, no, I never wrote Mr. Cree in my life. I talked with Mr. Cree over the telephone on on occasion, and only one.

Q. When was that?

A. That was during the latter end of the Code period, at which time Aetna had quoted a price, as I recall it, f.o.b. mill on a letting held by the U. S. Engineers at Milwaukee, and there was no file—or no price filed—with the Code Authority covering that letting for that destination. They quoted an f.o.b. mill price, as I undertood, and there was no such mill price quoted.

I made out a complaint and sent it to the Code Authority, and called Mr. Cree and told him that I had done that.

Q. Now, there is testimony in the record, Mr. Fellows, concerning another meeting—

25816 Mr. Leisure: Page 12656 of the record, Mr. Wooden.

Mr. Wooden: Thank you.

By Mr. Leisure:

Q. (Resumed) —which indicates that you were present at a meeting in Chicago in March of 1935 where certain representatives of cement manufacturers were present. Do you recall having attended that meeting?

A. Yes, sir.

Q. Are you familiar with the circumstances under which the meeting occurred?

A. Yes, sir.

Q. What were they?

A. Just shortly previous to the calling of that meeting, or some time previous to that, there had been announcements—we had sent an announcement out of a sales policy, or dealer policy. Other competitors had done the same thing. And this meeting was called by—I don't know who it was called by—but there were secretaries of various dealer organizations, some outstanding individual dealers, cement manufacturers, and so forth.

They met there and the dealers and the secretaries of the dealer organizations spoke about the plans that had been broadcast, sent out to the trade, and criticized those plans,—just told us their side of the story as to how it did not fit in with their picture, and so forth, and they
25817 were in hopes that some change could be made whereby they could participate to a greater extent in the business in their different localities.

Individual associations' secretaries got up and expressed how they themselves felt about their plans, and also stated as to how their member dealers had expressed themselves in opposition to the plan.

Q. Do you recall now at this late date what it was these dealers wanted, Mr. Fellows? Have you in mind anything as to that?

A. Well, the dealers in voicing their opinion and their criticism of these policies, their objection to these policies, was that there was certain business being taken away from them, that is, in which they were not participating. There were certain classifications made that would be sold direct, and that is what they were objecting to. In other words, they wanted—their whole criticism was that they

wanted to handle all of the cement business in their particular localities.

Q. Well, as the result of the meeting, was there any indication that manufacturers would or would not act in any certain way because of this discussion?

A. No, there was not. They didn't seem to be anything like that called for in the objections that these dealers made. They simply presented their side of the story hoping something might be done to take care
25818 of it to their satisfaction. The fact that there wasn't anything done I think is indicated due to the fact that some time later, two or three or four weeks later—I don't remember just how long—there was another similar meeting held with some of the same secretaries and some additional secretaries, at which time they again stated their objections.

Q. Well, before we get to that one: As the result of this first meeting, did you, yourself, or your company, take the slightest action of any kind as the result of this meeting?

A. No, I don't believe we took any action. I have no recollection of our taking any action at all after that meeting.

Q. Now, coming down to this other meeting you have just mentioned, when was that?

A. Why, it was shortly after this first meeting. I don't know just how long after that was, a week or ten days, maybe two weeks. It followed very shortly, however.

Q. Do you recall, Mr. Fellows, what happened at that meeting?

A. It was a reiteration, practically, of the criticisms and objections they had to the plans that had been sent out by various cement companies, almost practically a repetition of the first meeting.

Q. Was any action taken at that meeting of any kind as to what you or other cement manufacturers should do?

A. No, sir.

Q. In the future?

25819 A. No, sir.

Q. And after it was over, did you, personally, or your company, take any action of any kind as a result of the meeting?

A. No, sir.

Cross-Examination By Mr. Wooden:

Q. Mr. Fellows, what is the territory in which you are the western sales manager?

A. The territory under the jurisdiction of the two district sales managers, Mr. Smith and Mr. Moors. That comprises Michigan, Indiana, Illinois, Wisconsin, that portion of Minnesota that we might get into, Iowa, Missouri, the western half of Kentucky, western half of Tennessee, and that portion of Arkansas that we cover. I think that covers the territory covered by the two western offices there.

Q. How about Ohio?

A. I have nothing to do with Ohio, no, that is under the jurisdiction of the Ironton office.

Q. Do you supervise all sales in that territory even though they might help from some Alpha mill outside of that territory?

A. Just what do you mean "supervise," Mr. Wooden?

Q. Well, do you act as western sales manager for all sales in that territory regardless of where the shipment may come from?

25820

A. Yes, sir.

Q. Do you place orders for shipment by Alpha mills outside of that territory with Alpha mills?

A. I don't. The district sales manager, if it is more to our advantage to ship from one of our other mills, why, the local district sales manager may. It depends entirely upon the conditions prevailing at such a time that such an order may be received. He may take it up with us or he may not. It depends upon the conditions prevailing.

Q. Referring to your connection with the International Company at Spokane, Wash., back there about 1912 or 1913, I understood you to say that you used the Metaline Falls base at that time.

A. Yes, sir; when we started out we figured out a base at Metaline Falls.

Q. Can you say whether or not that was before or after the Lehigh Company acquired the Metaline Falls mill?

A. Well, to my recollection and knowledge, it was known at that time, I know, as the Inland Portland Cement Company. Now, to the best of my knowledge, when they started out, the Lehigh didn't have anything to do with it. Subsequently, they might have acquired it. I don't know.

Q. You don't know when they acquired it?

25821 A. I do not.

Q. Was there a time when you were connected with that International Company, when you did not use a base at some other mill?

A. I know of no time when we didn't use a base out there.

Q. You never knew a time when the International sold on its own base at its own mill?

A. Yes, subsequently, after—when we got started out there, there was a base at Metaline Falls. We used the base at Metaline Falls. Subsequently, there was a base established at Irvin, Wash., which was our producing point.

Q. I see.

You don't recall any time when the base at Metaline Falls was first established, or was it in existence at the time you entered the business there with International?

A. Well, I don't know but what it might have been before I became connected with the International. I know when we started out our sales efforts we took the freight points at as many points as we could get the destination price from and figured back to a constant figure at Metaline Falls, and we used that in the compilation of our destination prices.

Q. Now, with regard to the matter of freight rate calculations, I understood you to say that on these work sheets the sales department put on the freight rates and then they are checked by the traffic department; is that correct?

25822 A. Yes, sir.

Q. And the traffic department checks with the railroad tariffs?

A. Yes, sir.

Q. Where does the sales department get them when it puts them on in the first instance?

A. They have files there for each town that they ship to, or where there are prospective customers, a card file.

Q. Yes. You mean customer cards or destination cards?

A. No, they are not customer cards. They are destination cards that they get this information from.

Q. Like those used in Mr. Postelle's district?

A. Well, I have never seen the cards that Mr. Postelle used.

Q. Where did the freight rates on the sales department cards come from?

A. Given to us by the traffic department.

Q. In other words, they just go around in a circle there, the traffic department furnishes the sales department, and then the sales department makes up rates, and then the traffic department checks them again with the tariffs?

A. Well, I think those exhibits will show where there are several errors in freight rates.

Q. However that may be, is that correct that there is a, you might say, a circular check on that?

A. Well, that is the way it is handled, Mr. Wooden.

25823 Q. Well, your salesmen use the Institute freight rates, don't they?

A. The salesmen at the present time are using Institute rate books; yes, sir.

Q. For the purpose of figuring these destination prices?

A. For the purpose of knowing what the rate is there.

Q. In that they may figure the destination price?

A. That is right, they are out there and they try to meet the lowest quoted price, and in doing that they probably use the rates that are given them by the sales department in the various offices. They are reporting to us constantly as to how—as to the competitive conditions that they find.

Q. Is it your testimony that the freight rates put on the destination cards are not taken from the Institute freight rates?

A. No, sir; it is not.

Q. It is taken from—

A. It is taken from—

Q. It is taken from the traffic department?

A. It is taken from the traffic department, the direction sheets that the traffic department gets out. Now, there may be some of those destination cards at the time these work sheets were made up, that haven't received some correction, that may be in the process, or may be made a day or two before that hasn't gotten to the sales

25824 department at the time these work sheets are made up. They were sent out to the traffic department then for checking, and if there is any error in the rates that haven't come to it, or new rates, or rates are changed

that haven't as yet gotten to the sales department, why, the traffic department makes that correction and puts them on.

Q. When you find an error—when the traffic department finds an error in the records as maintained by the sales department, what do you do? Do you report that error found to the Institute for its correction of the freight rate books?

A. The error that is found in it—I don't know as I get your question, Mr. Wooden. Do you mean the error that might be found in the destination card that the sales department has?

Q. Yes.

A. No.

Q. Do you ever report corrections to the freight rate bureau of the Institute?

A. I don't. I don't make any. I don't report any such thing. Whether the traffic department works in conjunction or as to what extent they may work in conjunction with the Institute, I presume if they find some different rate in the tariff or their interpretation of the rate may be different than they have with the Institute, they may call up the rate clerk at the Institute to find out whether or not this rate is in accordance with the interpretations that our traffic man has, or vice versa.

25825 Q. Don't you know that that is done?

A. I don't know that that is done. I presume that it is done.

Q. You presume it is done?

A. I would, if I was the traffic man. I know that various interpretations can be given to some of these rates as to intermediate clauses, and so on and so forth.

Q. In other words, even traffic men may differ as to what a rate should be?

A. I think they do at times; yes, sir. That is one reason that we wanted the destination prices out there in Spokane, because there is a difference.

Q. You presume, at any rate, that when errors are found by the traffic department, that they report those errors to the Institute freight bureaus?

A. I don't think I would say errors. I would say differences.

Q. All right, differences. Is that done very promptly upon discovery of the differences?

A. That I don't know. I couldn't tell you how promptly that is done.

Q. Is it done by telephone?

A. I don't know that.

Q. You receive from the Institute corrections, don't you, reported from time to time by others?

A. Our traffic department receives corrections
25826 from the Institute, the rate service; yes, sir.

Q. They receive corrections reported by other mills by telephone as well as by these correction sheets?

A. I don't know. I don't know how the Institute gets their information.

Q. I am asking you about your traffic department, whether it receives by telephone from the Institute freight bureaus corrections or notations of differences reported by other mills,

A. Well, when—my understanding is that when the traffic department of the Institute finds corrections in the railroad tariffs, that they notify our traffic manager as to those corrections or those changes or differences.

Q. I am asking whether sometimes immediate notice isn't given by telephone and followed up by correction sheets later?

A. I don't know of any such notice.

Q. You don't know the course of action on that?

A. Well, I don't know of any instance where they have been telephoning. I have seen the correction sheets come into the office, and I have seen the correction sheets go to the traffic department.

Q. You know that your traffic department reports changes or corrections or differences, whatever you call them, to the Institute bureau?

A. No, I didn't say that. I didn't say that. I assumed that they might do that, and I would if I was the
25827 traffic department. I would try and check with them as to the service that we are subscribing to. I would try and check with them to see if my interpretation was in accordance with theirs, or if I was wrong, or if they were wrong in the interpretation.

Q. Isn't the traffic department under your supervision?

A. Yes, sir.

Q. Yet you don't know what they do in that regard?

A. I know they furnish us the rates.

Q. But I mean, in the regard that I asked you, you don't know what the traffic department does?

A. There may be certain details—there may be certain details about it that I haven't been in touch with.

Q. You consider that as a detail as to whether or not they do report changes to the Institute freight bureaus and receive reports from them?

A. I don't think I quite—

Q. Do you consider that a detail with which you should not be familiar?

A. I wouldn't say "shouldn't be."

Q. But with which you are not familiar with, at any rate?

A. I am not sure I get your question, Mr. Wooden, whether I am—

Q. Well, you just gave the explanation that you didn't know all the details about it, and I had asked you whether you considered that a detail.

25828 A. Well, there may be details that I don't run in touch with every day. We expect the traffic department to keep us advised as to the correct rates, the rates that are applicable on our shipments.

Q. You don't know whether your traffic department has received information from the Institute freight bureaus as to corrections other than those shown on the correction sheets, or, I mean, in advance of those shown on the correction sheets?

A. It is my understanding that that is the way the Institute rates are handled, that they make up these correction sheets and send them out to us.

Q. Yes, but I am asking you about the use of the telephone to get more prompt information than the correction sheets give.

A. I don't know that it would be more prompt, when we are right there in Chicago. They could send it over almost as quick by messenger as they could by telephone.

Q. Well, is that done? Do you get information by messenger?

A. They may.

Q. And you don't know?

A. As a matter of fact, I think a good many of these correction sheets come out with messengers to the various cement companies in order to save postage.

Q. But I am asking you whether you get any advance information that is later incorporated in the correction sheets?

A. What you mean is the correction sheet a con-
25829 firmation of some telephone call?

Q. Yes.

A. That I don't know. I have no knowledge of any such instance.

Q. Aren't you familiar with the kind of service provided by the Institute freight bureaus regarding freight rates on cement?

A. Well, I know they furnish the freight rates and corrections. I don't know that I am prepared to state how efficiently they act in that. We have found them pretty good in giving the correct—

Q. Does your traffic department have instructions from you, its head, to report differences it finds in the freight rates from those which appear in the Institute freight books?

A. No, sir.

Q. You don't know actually what the traffic department does in that respect, regardless of your instructions? You said just then you had no instructions of that sort.

A. Well, the instructions the traffic department has from us to provide us with the correct freight rates. As far as we know, they do, because there are various times, as you have noted by those work sheets, where corrections are shown there.

Q. Does your traffic department check the freight rates received from the Institute freight bureaus?

A. I am quite certain they do.

25830 Q. Check them with what,—with the tariffs.

A. With the tariffs.

Q. And then if they find differences, what do they do?

A. Differences between what they find and what the correction sheets may show?

Q. Differences—

A. They will undoubtedly call up to find out what the Institute—what the rate man over there has placed on there, and why this rate applies, and so forth. I check with him on information to see whether or not he is wrong —or the Institute is wrong. He is trying to keep himself advised all the time as to the correct interpretation of the railroad tariffs.

Q. My question—I want you to be sure you understand it—is the traffic department compares the Institute freight bureau books with what,—with the tariffs, railroad tariffs?

A. The traffic department builds up cards from the information that's appearing or that they get out of the official railroad tariffs.

If I should go out to the traffic man and say, "Howard, I want you to give me the rate from such and such town, Buffington, La Salle, or any other place," he will refer to his file case and pick out a card that shows the rate which he has taken out of the railroad tariffs.

Q. The check of the traffic department—

A. If—

25831 Q. The check of the traffic department is between the railroad tariffs and the Institute books, is that correct?

A. How is that?

Q. The check which the traffic department makes is between the railroad tariffs, or information compiled from the railroad tariffs, and the Institute books?

A. Yes.

Q. Is that correct?

A. Yes.

Q. And if they find differences, they, then, take it up with the Institute bureau; is that right?

A. Well, if I was a traffic man I would want to find out if I had placed a right interpretation on it, or if there is any difference between the two, why, then, who is right and who is wrong.

Q. And until you found out who was right and who was wrong, you could not quote on a particular piece of business involving that disputed question?

A. No, that is not right at all. We use the interpretation that we have placed on that, whether it agreed with the Institute rate or not.

Q. Yes.

A. We would use what we had found it, because we think we have a darn good—pardon me—traffic department.

25832 Q. And if you applied a different rate from the one—from the Institute rate, what it would be,—if your rate were lower you would be beating competition at the point, and quoting below the delivered prices of others, would you not?

A. Not necessarily.

By Mr. Wooden:

Q. Depending on, of course, whether that made a lower combination than the regular combination of base price plus freight?

A. That's right.

Q. Yes, of course. But assuming the same base price, and you used a lower freight rate, shown by your traffic department to exist, you would meet the delivered price of other mills at that particular point, would you not?

A. We would be quoting a lower quoted price at that point, that is true.

Q. Yes. And if you used a higher rate than the Institute book showed, you would be high at that point, would you not?

25833 A. Yes, sir; and we would mighty soon find it out, too.

Q. And you would go ahead and quote, in such an instance, without caring or knowing whether you would be high or low?

A. We might—we might be high or might be low. We try to meet the lowest quoted price resulting at destination.

Q. Didn't you say yesterday you had given up trying to beat competition, and were just trying to meet it?

A. I don't think I said that.

Q. Well, is it not a fact, that you do not try to beat competition at the destination, but merely to meet it?

A. We try to meet the lowest price that we find at destination; that is what we try to do.

Q. Is it not a fact that you do not try to beat it?

A. Well, we try to meet the lowest price that we find quoted.

Trial Examiner Norwood: Answer the question. Answer his plain question there.

By Mr. Wooden:

Q. But you do not try to beat it?

Trial Examiner Norwood: Answer that.

Mr. Porter: Your Honor, I object.

Trial Examiner Norwood: Answer the question.

Mr. Porter: May I be heard just a moment?

I think the question is ambiguous. If the question were: "Is it a fact that you do not try to quote a lower price?"—that is intelligible; but what does "beat competi-

25834 tion" mean?

Trial Examiner Norwood: I think this witness

knows, and everybody else in this room knows what he means. The objection is overruled.

Answer the question.

Mr. Wooden: Will you read the question?

(Last question read as follows:

"Q. Is it not a fact that you do not try to beat it?")

Trial Examiner Norwood: That is, bid lower than the price you find.

A. We feel that we ought to get just as much for our cement as somebody else gets for theirs.

By Mr. Wooden:

Q. And you do not feel you ought to take any less?

A. No, sir; we do not, not if we can help it.

Q. Can't you answer my question,—as to whether you try to beat competition by making a lower price on a destination than your competitors?

Mr. Leisure: I object to that; the witness has answered the question.

Trial Examiner Norwood: The objection is overruled.

Mr. Leisure: And Counsel is merely trying to—

Trial Examiner Norwood: It is a matter of terminology.

Mr. Leisure: Merely asking him to adopt his 25835 phraseology, and that is not proper.

Trial Examiner Norwood: Oh, he has a right to see—

Mr. Leisure: Not when the witness has answered the question three times.

Trial Examiner Norwood: The objection is overruled.

Mr. Wooden: Will you read the question, please?

Trial Examiner Norwood: Read it.

(Last question read by Reporter.)

A. Well, all I can say, Mr. Wooden, is the only thing we try to do is to meet the lowest quoted price.

Trial Examiner Norwood: You cannot answer it?

The Witness: Go as low as anybody else.

Trial Examiner Norwood: You cannot answer that question by "yes" or "no,"—can you or can't you?

The Witness: Well, I know of no instance where we have tried to go lower than somebody else; that is, there might be some exception to that when you refer back to the State of Illinois bid, and so forth.

By Mr. Wooden:

Q. Well, if you did go lower, wouldn't that be beating your competition?

A. Depends upon what the competition was, if we knew what the competition—if we knew what the competition was, and deliberately did it, it probably would be.

Q. But if you went below what your competitors 25836 bid at a given destination, wouldn't that be beating their competition, then?

A. What do you mean "beating competition"?

Mr. Leisure: Now, if Mr. Wooden's question needs explaining, it should be explained before the witness was allowed to answer it. Mr. Porter objected to that.

Trial Examiner Norwood: I think we have spent enough time on that.

Mr. Leisure: I object to the question.

Trial Examiner Norwood: I think we have spent enough time on it.

Mr. Wooden: All right.

By Mr. Wooden:

Q. These work sheets that you used in making up bids, showing the base prices of freight from various basing points, you did not get, or pick up, a price in the field at every one of those destination points before you figured those prices, did you?

A. No, sir; I wouldn't say that we did, we might have, but I wouldn't say, I wouldn't know whether or not we did; we might have.

Q. What you did, wasn't it to figure back enough instances to satisfy you that the base price was such and such, and then use that base to quote per destination affected?

A. From the information we got in the field, we took these prices and used the freight rate that we had, 25837 and we would work those back until we found some constant figure that would apply at some particular producing point.

Q. And then you would—

A. And then that's what we would figure as the competition we would have to meet.

Q. Yes.

A. If that point made the lowest combination.

Q. Then others—

Trial Examiner Norwood: Then as to other destinations, you simply added the freight to that base?

The Witness: If there were any destination we had particularly picked up.

Trial Examiner Norwood: That is right.

By Mr. Wooden:

Q. In other words, you are bidding and figuring constantly on delivered prices that are worked out in that way, and without having a particular field quotation at that particular destination; is that correct?

A. Well, we may not have picked up definite information of the delivered price at that particular field. Sometimes there is a siding where nobody may have quoted, as far as that is concerned.

Q. Yes.

A. But the rate there from the tariffs reverts back to a constant figure at some point.

25838 Trial Examiner Norwood: All right.

The Witness: That creates the competition.

By Mr. Wooden:

Q. Well, you might have to figure out, deduce what the base price was by figuring back a half dozen cases, and then after you had satisfied yourself that the base price was such and such, you might apply that base price to 50 destinations, wouldn't you?

A. When we had found these various prices quoted in the field at certain destinations that reverted back to a constant figure at some point, we would use that constant figure at that point, plus that rate applying from that point, and if that made the lowest combination, why, that would be the combination we figured we had to make.

Q. And you might quote fifty destinations in such a manner where you had the field quotation at only, say, a half dozen destinations among the fifty?

A. I wouldn't say half a dozen.

Q. Well—

A. Enough to satisfy us that a constant figure prevailed at such a producing point.

Q. How much does it take to satisfy you?

A. How is that?

Q. How many instances does it take to satisfy you as to what the base price is?

25839 A. Why, I wouldn't say. I wouldn't want to place any particular number, because I don't know; it depends upon the conditions prevailing.

Q. Wouldn't a half dozen suffice?

A. It might in some cases and in others it might not.

Q. And, as a matter of fact, might three or four, even, suffice in some cases?

A. I wouldn't say that because I think we might want more than that, because I don't think that would definitely identify that.

Q. You do not figure back to non-basing mills to find out what their mill price is, do you?

A. Well, now, wait a moment—does a non-basing mill have a mill price?

Q. Well, they have a price that they get at the mill.

A. Might have what you might term a mill net.

Q. But, regardless of that, you do not figure back from the destination price to any non-basing mill to find out what the resulting figure is there?

A. We have had to do that at times, Mr. Wooden, and we have found a base applying at those non-basing points.

Q. Yes.

A. Now, because a mill is a non-basing point today, doesn't mean it is not going to be a basing point tomorrow, perhaps.

Q. But you ordinarily do not figure back to find 25840 out what the equivalent mill is at a non-base mill, do you?

A. I can generally get that by the looks—by the rate itself.

Q. But you do not have it on these work sheets, do you?

A. How is that?

Q. You do not have it on these work sheets, do you?

A. You mean non-basing points on that work sheet?

Q. Yes.

A. On those work sheets?

Q. Yes.

A. I don't recall any—I don't recall that on these work sheets where we were figuring our competition that we did.

Q. Why didn't you figure back to the non-base points to find out what their mill equivalent was?

A. Well, we haven't—we don't find competition from non-basing points in the field. The competition comes from

points where we have arrived and found a constant figure prevailing.

Q. Well, you sell in competition with non-basing point mills and particular destinations, do you not—and find there are quotations there?

A. We do; we do.

Q. As a matter of fact, don't you find the non-basing point quotations resolving back to the base figure at some other mill rather than to a base figure at the non-base points?

A. Yes, yes. I don't know what else a non-basing point mill would do.

25841 Q. In other words, there wouldn't be any distinction between non-base mills and base mills, if that were not true?

A. Correct.

Q. Did you have in this Illinois Highway bidding, during 1931 and 1932, or at any other time, a minimum mill net that you used in your bids?

A. In 1931 and 1932?

Q. Yes, or any other time, I ask particularly at that time.

A. Well, we have observed the minimum, I know. In one of those bids, as I recall, we observed a minimum.

Q. Was that 80 cents, you mean?

A. No, I don't mean that.

Q. No?

A. I think it was one of those where we observed a minimum of one dollar, as I recall it.

Q. Oh, the 80 cents,—that was a mill base figure, was it not?

A. Yes, sir.

Q. Wasn't that—you might say—a minimum mill net, in the sense that that is the lowest you would go, and also the highest you would go? In other words, it was a flat figure at the mill?

A. I wouldn't say it was a minimum; I would say it was a maximum.

25842 Q. Well—

A. We put in 80 cents at LaSalle, and 80 cents at St. Louis.

Q. And that was effective, 80 cents, everywhere, was it not?

A. Had it been allowed to go at that, if we had not been

forced to sell on that award for less money than that, that would probably have been minimum, too, but we had to meet competition at that point, and got considerably less than 80 cents.

Q. Yes.

A. And that 80 cents included discount, too.

Q. In other words, the real minimum, after allowing the discount, was that 70?

A. Yes, sir.

Q. Has the Alpha Company at LaSalle ever led an advance in base-point prices?

A. Well, I wouldn't say whether we had led one or not. I don't know. I just don't recollect whether we ever led an advance or not at that point.

Q. There are two other companies, Lehigh and Marquette.

A. You might say we led when we quoted on that basis of 80 cents to the State of Illinois.

Q. You did lead that?

A. We made that bid, yes.

Q. Outside of that, do you remember any case
25843 where Alpha Company ever led an advance?

A. Well, off hand—

Q. At LaSalle?

A. Offhand, I don't recall, Mr. Wooden, whether we did or not.

Q. Well, Alpha Company is a chain company with various mills, and has basing points at various mills, including one at LaSalle, and you cannot tell me whether it ever led an advance at LaSalle?

A. I can't—I can't recall at the present time whether we ever led an advance at LaSalle or not.

Q. Has it done so in the last 10 years?

A. I can't recall whether we did or not.

25865 Q. Aren't you aware, Mr. Fellows, that in July, 1932, the Marquette Company led an increase in the
25866 price of 40 cents a barrel, and raised the base price from 85 cents to $1.25?

Mr. Leisure: That is entirely beyond the direct, Your Honor pleases. I did not go into any of that.

Trial Examiner Norwood: The objection is overruled.

A. I don't recall that Marquette led it. In fact, I don't know who did lead it. I know we found these prices in the field, and we were very glad to take advantage of those increased prices.

Q. Can you cite an instance since July, 1932, where Marquette Company has made quotations on State business, or any other kind of business, if you want, at less than the lowest combination of base price plus freight?

25867 A. I am trying to recall the bids in 1933, the State of Illinois, and my recollection is that we bid at three different times there, and did not get an award, and that there was legislation passed by the Illinois Legislature giving the State Highway Department the power to negotiate. Now, what those negotiations with Marquette were, I don't know.

25869 Q. Wasn't it a matter of common knowledge and comment in the industry that Marquette Company was pursuing such a policy?

A. We always found competition from Marquette—we found competition from others in the industry, too.

25870 Q. Didn't you put in a base price at Marquette's mill at Cape Girardeaux as a move in response to their policy?

25872 A. My own personal opinion regarding that, putting in a base at Marquette mill at Cape Girardeaux, is that we didn't put a base in there. We found quotations in the field which we figured back to what we figured was a constant figure at Marquette, at Cape Girardeaux.

I don't feel that we put a base on the Marquette plant at Cape Girardeaux, and I think there has been testimony brought in that indicates that—the figure we were using was not as low as they were quoting.

25882 Q. That is the situation, isn't it? So that no one has an advantage over anyone, at a given destination; is that so?

A. I wish it were that way. Any time I have an advantage, I want to take that advantage if I have geographical position—I want to take advantage of that geographical position, and get as much for my cement as I can.

Q. But you do not do it by cutting the lowest combination of base price plus freight?

A. One mill cannot have an advantage over the other long, because the other mill will come in and meet the competition so as to get some of that business.

Q. So it is your position that no one mill can beat another at its lowest delivered price?

A. They can at a certain time but eventually it will get down to where you are meeting the lowest competition.

Q. Yes, and some mills may be kept out of the territory because the price gets too low, too?

A. I have never seen that happen.

25883 Q. Well, that was my question,—you testified that 80 percent of your trade was dealer trade in 1933. It has been less than that since then, has it not?

A. I don't think I testified to the effect that our dealer business in 1933 was 80 percent,—I don't recall that,—that is, that it applied to that year.

Q. It came up in connection with the 1933 bid.

A. It might have come up in connection with that bid, but I don't think my testimony applied to that particular year, on that year alone.

Q. Well, did the 80 percent apply to—

A. Well, I think—I think our dealer business that we handled through dealers—and don't sell—where we don't sell direct to consumers—probably runs between 80 or 85 percent, or around there. That is just a guess

25844 on my part. I can't say definitely.

Q. Even at present?

A. How is that?

Q. Even at present?"

A. I would say so, yes, as far as I recollect.

25903 "Q. Can you recall any of the cases where you have put in exhibits in the last two days where the exhibits show the use of some other method of quoting than the quotation of the lowest combination of base price plus freight or a mill price derived therefrom?"

A. Well, that price that we quoted the Government where we quoted a price f.o.b. mill, was not the lowest combination of base plus freight.

By Mr. Wooden:

Q. What case was that?

A. That case where we quoted the Government, 1.50, LaSalle.

Q. You quoted your base price, however?

A. Yes, sir; but you wouldn't say a base price was made up of a combination of the lowest base plus freight, would you?

Q. It all depends on where delivery was to be made, I suppose.

25904 A. I am talking about the base price, the producing point.

Q. If you had added the freight, rail freight, to that base price, what, then, would it have given you?

A. I don't know what it would have given us; but it would have put us plenty high, I am afraid.

Q. In other words, the base price plus freight was not the basis on which you made the quotation regularly to that particular destination?

A. Well, what destination are you talking about, Mr. Wooden? I am referring to this where we quoted the price f.o.b. mill to the Government. Now, that was to be shipped—the Government was to take title to that at the mill and ship on land-grant rate.

Q. I am referring you to Respondents' Exhibits 982 to 1074, inclusive, Mr. Fellows, and will ask you to point out any cases such as the one—in addition to the one you have mentioned—where the bidding, or the method of calculation was other than on the basis of lowest combination of base price plus freight, or a mill price derived therefrom.

Mr. Porter: Now, Your Honor, have we got to take two or three hours' time? The witness cannot do that without reading all the exhibits. I happen to remember at least one exhibit that he has hasn't mentioned that comes in. If the witness has to go through all of these, we will never get through.

25905 Trial Examiner Norwood: I do not see the materiality of that, whether he can point that out—those are in evidence. It will take some time.

Mr. MacIntyre: If Your Honor please, what we want is this witness' interpretation of what those exhibits show. Mr. Porter has given his interpretation of some, but let us get the witness' interpretation. They got an interpretation, in part of some, from the witness yesterday. Why cannot we get the witness' interpretation of these exhibits at this time, if he can find some interpretation that they now claim, or Mr. Porter now claims, that some of the exhibits show.

Trial Examiner Norwood: I do not think the witness' interpretation is important on that point.

Mr. MacIntyre: They are likely to argue just the opposite from what we believe the witness' interpretation will be from the majority of all of these exhibits, if not all of them.

Trial Examiner Norwood: I think I will sustain the objection to that in the interest of time.

By Mr. Wooden:

Q. Mr. Fellows, you gave some testimony about not wanting to take less than a certain price at Battle Creek. Is that your Bellview base price that you were referring to there?

A. I don't recall, Mr. Wooden, whether that was 25906 the base price—base at Bellview at that time or not.

Q. Well, when you say "Battle Creek," didn't you mean the Bellview base price? I am referring you to your testimony on page 25270.

A. Well, when I referred to the Battle Creek mill, I meant our mill at Bellview, which was just outside of Battle Creek.

Q. When you said here on this page (indicating official record)—that you observe the minimum of $1.65 at Battle Creek—

A. Well, I—

Q. —did you mean by that your Bellview mill?

A. Yes, sir; yes, sir.

Q. Was the International Mill that you were with years ago a base mill?

A. It became a base mill, Mr. Wooden. It was not when we first started, but we eventually put in a base there.

Q. Did you put it in yourself, or did someone put it in on you?

A. I don't recall that—I don't recall that whether we did or not.

Q. Do you remember was Mr. Berry your superior while you were there?

A. Beery; yes, sir.

Q. Do you recall the adoption of a base at Metaline Falls along about 1915?

A. Well, I would think there was a base at 25907 Metaline Falls, even before I went with the International, before the International started to produce cement, I think there was a base at that point, and that's what we started out with, using the base that we figured at Metaline Falls. I don't know what might have happened, or been in force at Metaline Falls before I went into the business out there with the International.

Q. (Indicating) Showing you Commission's Exhibit 3209-A, wherein Mr. Clark M. Moore of the Colorado Portland Cement Company, in January, 1915, announced the establishment of 1:50 base f.o.b. Irvin; can you say whether that base was established on the Irvin mill by the Colorado—

A. No, sir.

Q. —or practiced by the Irvin mill, voluntarily?

A. I can't say; I don't know.

Q. In other words, you say that Mr. Berry that is referred to in Commission's Exhibit 3209-B should be Beery?

A. Beery, B-e-e-r-y.

Q. Was he in charge of sales there?

A. He was in charge of sales there.

Q. And you were under him?

A. Yes, sir.

Q. Now, can you tell us when and in what cases since the N. R. A. the Alpha Company has quoted the Government on a straight f.o.b. mill basis?

25908 A. Since the N. R. A.?

Q. Yes.

A. Well, I can't recall any specific instances at this time, Mr. Wooden, but I know we have done so.

Q. Do you mean without knowing the destination?

A. No, I do not mean that.

25909 Q. Did you have anything to do with handling the subsequent invitations from the Procurement Division?

A. Well, what subsequent invitation do you refer to?

Q. Subsequent to those Good Friday invitations of 1938.

A. Well, there are invitations coming up continually from the—even now.

Q. Did you have anything to do with handling the Procurement Division's invitations of May 3, 1938?

A. I don't recall what that invitation was, what it called for, or what it was, or anything about it.

Q. Have you handled any invitations from the Government for f.o.b. mill bidding since the spring of 1938?

A. Yes, sir.

Q. Do you make these equalized freight equalization bids, I believe you said?

25910 A. You mean with the so-called dams?

Q. No.

A. Yes, we have used those.

25914 Q. Do you consider the control clause whereby the Government was permitted to deduct the commercial or land-grant rate, whichever was lowest, as the equivalent of an f.o.b. mill bid?

A. I consider it the equivalent; yes, sir.

Q. Well, why, then, didn't you make the f.o.b. mill bid without the control clause, if it was an equivalent?

A. Well—it is a question of meeting the competitive price at destination again, that we find.

25929 Q. Do you recall a meeting at Chicago at which subjects as set forth in this Exhibit 23-A were discussed?

A. I so testified this morning, Mr. Wooden.

Q. All right. Now, who were present?

A. Well, Mr. Cree was present. As I recall it, Mr. Rooney was present. As I recall it, Mr. Rader, Mr. Hughes. I don't recall—

25930 Q. Who was Mr. Hughes?

A. He was with the Lehigh Company. And I don't recall—

Q. Was Mr. Stone there?

A. I don't recall that.

Q. Was anybody there from the Universal-Atlas Company?

A. I don't recall that there was. There might have been, but I don't recall it.

Q. Mr. Rohwer or Mr. Kronkrite?

A. How is that?

Q. Mr. Rohwer or Mr. Kronkrite?

A. I don't recall whether they were or not. They might have been.

Q. Who called the meeting?

A. That I don't know. I don't recall who called the meeting. It might have been—well, I don't know who it might have been, the trustee—

Q. Called by a trustee of the Institute?

A. Well, at the time I testified this morning we were trying to get some provision in the Code whereby the trucking situation could be handled through the Code.

Q. Can you fix the date of this?

A. No, sir; I cannot.

Q. Did you attend meetings of members of the district called by the Institute trustee in the Chicago locality?

A. Chicago? I didn't quite get the question, Mr. Wooden.

25933 Q. Mr. Fellows, is it your testimony that you have never attended any meetings of sales managers where representatives of other companies were present?

A. No, sir; that is not my testimony.

Q. Well, what is the fact regarding that?

A. I testified this morning to three meetings that I recalled, and I have also been present at association meetings. I have been present at some Institute meetings where trustees were elected. Outside of those, I have no recollection of having attended any other meetings.

Q. Have you attended meetings held by sales managers of various companies?

A. No, I recall no meetings of sales managers.

Q. Have you ever been in attendance at any such sales managers' branch or organization?

A. Well, we have a meeting here in New York or Easton every year of our own distribution managers or sales managers.

Q. I mean, of course, meetings attended by sales managers of various companies.

A. Well, I have been in these meetings that I referred to where the sales managers were present, yes, to that extent.

Q. Have you had meetings of sales managers?

A. You are just referring to exclusive sales manager meetings?

25934 Q. Yes.

A. I know of no such at all.

Q. Have you ever served on any committee of sales managers?

A. No, sir.

Q. That goes without exception as to time?

A. Yes, sir; from the time that I started in the business. I have no such recollection of any such thing at all.

Q. Do you say that the cement mills have never met together and discussed what area—the area in which trucking should be allowed and the area in which it should not be carried?

A. Why, I don't know that. I have talked to some

people as to how far they thought they could truck economically, and so forth.

Q. Some people? What do you mean?

25935 A. We were faced—we are faced in certain portions of our territory with trucking competition, in Michigan, Wisconsin.

Q. You say you have talked with certain people as to how far trucking could be carried on economically. You mean you have talked with some competitors?

A. With some competitors as to how far they figured they might be able to truck competitively. We have talked with the truckers as to how far they could truck and what they would charge us, and so on, and so forth.

Q. Isn't there an area in Wisconsin nearby Milwaukee where the trucking area was set by discussion among the mills?

25936 The Witness: I know of no such instances. I don't recall anything like that at all.

25940 Q. Coming to these meetings that you described at which secretaries of dealers' associaions were present in Chicago, what manufacturers were present?

A. You want the names of individuals, Mr. Wooden?

Q. Yes, and the companies.

A. I recall Mr. Rohwer—I don't mean Rohwer—Rader was present, Mr. Cabanis was present.

Q. Mr. Cabanis of what company?

A. Northwestern States.

Q. Yes.

25941 A. There were some—

Mr. Porter: This is 1935?

Mr. Wooden: Yes.

By Mr. Wooden:

Q. The spring of 1935.

A. There was someone there as I recall it, from the Universal Company, but I can't recall who it was.

Q. Mr. Scovill?

A. Who?

Q. Scovill.

A. No, I don't think it was Scovill.

Q. Rohwer?

A. Who?

Q. Rohwer.

A. My impression is that it was either Rohwer or Mr. Kronkrite or Mr. Stone, one of those three.

Q. All right. What others?

A. I said Northwestern States, Universal. I think there was someone there from Medusa. I think Mr. De Kamp, their district sales manager in Chicago, was also present.

Q. Any others?

A. I am not sure of any others.

Q. Was anyone there from Lone Star?

A. That I don't recall.

Q. Was anyone there from Penn-Dixie?

25942 A. My recollection is that there was someone present from Penn-Dixie, but who it was, I can't say.

Q. Mr. Hunt from Iowa?

A. I don't know. I can't recall who was present from there.

Q. Now, these that you have named as present, were they present at this first meeting?

A. That would be—that is my recollection; yes, sir.

Q. Who were in attendance at the second meeting?

A. Well, I couldn't tell you. My recollection definitely—my recollection is that the second meeting was a repetition of the first to a large extent, and, as far as I know, why, these same ones might have been present at the second one.

Q. Do you recall any others that were present at the second meeting who were not present at the first?

A. No, sir; I do not.

Q. You said you didn't know who called the first meeting?

A. That is true.

Q. Do you know whether it was called by the dealers or by the manufacturers?

A. My recollection is that we had word of this meeting from one of the dealers from out in the Minnesota territory, as I recall it.

Q. The Association secretary there?

A. I don't know if he is an association secretary or not.

Q. What things in the February, 1935, announcement of the manufacturers were the dealers criticizing?

A. I don't recall offhand, Mr. Wooden, just what that February announcement is. They were criticizing—they were finding fault and they were hoping that certain things would be done where certain business that had been handled by dealers and, in accordance with that announcement, were now to be handled direct, they wanted to get that back so they could handle that business, so that the business would be handled through them rather than be handled direct.

Q. What was the position taken by the manufacturers at those meetings?

A. The position that was taken by the manufacturers was simply that they sat there and listened to what they had to say, and listened to their objections.

Q. Took no position at all?

A. No, sir; none at all.

Q. Neither opposed or showed sympathy with the dealers' contentions?

A. Neither for nor against; just listened to their objections.

Q. You mean to say that the manufacturers didn't say anything at all?

A. I wouldn't say that they didn't say anything at all, but they took no position one way or the other, for or against.

Q. All right. Tell us what they said?

25044 A. Why, I can't tell you what they said.

Q. Can't you tell us what any manufacturer said?

A. No, I cannot say that I can recall what they said, what any single manufacturer said.

Q. Did you say anything?

A. No, sir; I did not. I stopped there and listened.

Q. Did Mr. Rader say anything?

A. I think Mr. Rader had something to say.

Q. What did he have to say?

A. I don't know what he had to say. I don't recall what he had to say.

Q. Did you say whether he was sympathetic toward the dealers' requests or opposed them?

A. Well, I don't recall what he had to say. If you want my guess on the matter, I can give you my guess.

25045 Q. Was any suggestion made that some proposals be reduced to writing?

A. No, sir. I recall no such instance at all.
Q. Were any minutes made of those meetings?
A. Any what?
Q. Any minutes kept of those meetings, or made?
A. I don't think so; I didn't see any being made.
25948 Q. How long did these meetings with the dealer association secretaries last?
A. My recollection is that the first meeting, I think we assembled along about 10:30 or 11 o'clock, and some
25949 of them had lunch together, and then the next one, after luncheon—
Q. Did you have lunch?
A. Yes, I stayed for lunch, got a free lunch, as far as that is concerned, and the next meeting was held the same way, in the morning, but, as I recall, there was no lunch attached to that, and that was the end of that meeting.
Q. Wasn't anything definitely determined at the meetings at all?
A. There was nothing definite. There didn't seem to be any call for anything like that. These dealers were just voicing their dissatisfaction with the policies that had been put out.
Q. They wanted something pretty definitely, didn't they?
A. They wanted something pretty definitely, they wanted to handle all the cement.

25952

Brooklyn, N. Y.,
October 27, 1939.

25954 JOSEPH BROBSTON, called as a witness on behalf of the respondents being first duly sworn, testified as follows:

Direct Examination by Mr. Leisure.

25965 I am connected with Hercules and am the chief executive officer of the corporation. I am president of the company and have held that position since the fall of 1937 at which time I succeeded the late Clarence Wolf, who died in the summer of 1937. I first became associated with Hercules on April 15, 1933. Before I became president I was executive vice-president.

and general manager in charge of the affairs of the company. The same Mr. Wolf was president of the company from April 15, 1933 until his death. During that period I was the chief executive officer of the company because Senator Wolf was not a cement man in any way and I had charge of all of the affairs of the company and was practically the head of the company. In that capacity I succeeded Morris Kind, who died in March, 1933, who was
the former president of the company before Sen-
25967 ator Wolf. I had been in the cement business for
33 years prior to the time when I came to Hercules. I started in the cement business June 15, 1900 when I went with the Dexter Portland Cement Company. For a great many years I had a great deal to do with the policies of the Dexter Company. When I first went with that company I was in charge of the office and was made secretary and treasurer and then Mr. William B. Newberry, manager, left and I was put in charge of the plant and I had a great deal to do with the policies of that company from then on. I was vice-president and general manager of the Dexter Company for most of the time I was there. In that capacity I had to do with the manufacture of cement. I was in charge of the mill. Of course, I had an operating superintendent but I was in entire charge of the operations of the mill. When I went with Dexter Company, it was in process of erection and Mr. Bartoll, the president,
directed me to wholly familiarize myself with con-
25968 tracts for machinery that were being made. I took those contracts up to Nazareth with me and was around the plant every day while the machinery was being installed so that I was fully familiar with the machinery and when Mr. Newberry, the general manager, left they put me in charge. Mr. Newberry was a very efficient chemist, one of the early men in the industry, and a very capable man. I was fortunate in being able to learn the business under him. Mr. Bartoll was president at the time. He had decided to erect this plant. He had been a cement man. He had been connected with Alpha and he got out of Alpha
and raised the money to erect Dexter Company. I
25969 was in the Dexter plant every day while it was be-
ing erected. I was fully familiar with the machinery and was with the company when it started up so I was fully familiar with the operations of the machinery as well.

I am a member of the American Society of Testing Materials but I was not at that time. I am a member of the Committee C-1 of the A.S.T.M. and I have been a member of the Society of Testing Materials for 20 years, I guess.

I think it was between 1890 or 2 that I joined the
25970 society. It is my recollection that I was made a member of Committee C-1 five or six years after I joined the Society. I think that was about 1915 or 16. I am a member of the American Society of Mechanical Engineers and have been for maybe twenty or twenty-five years and I am a member of the Engineering Society of the Lehigh Valley. Between the time I started with Hercules and after I left the Dexter Company I was connected with Nazareth in the position of consulting engineer. Mr. Coffin, who was the general manager and treasurer at that time, I think, of Nazareth, had no practical experience in the cement business and the two practical men he had with him he had lost just before I left the Dexter Company and immediately on my leaving Dexter he asked
me to come with Nazareth as a technical adviser
25971 more than anything else. During the period that I was with Nazareth I had nothing to do with the details of the selling end of the business. The managing head at that time was George F. Coffin, who died in the fall of 1937, I think. The circumstances under which I went with Hercules were that Morris Kind, the former president, and Mrs. Kind were very close personal friends of both Mr. Coffin and myself. At the time of Mr. Kind's death, Mrs. Kind was very much worried,—her entire fortune was in Hercules and there were no cement executives left with that company. Mrs. Kind came to Mr. Coffin and myself about the matter. Because she felt it was highly important for her to have someone there who was fully familiar with the cement business and after going over the matter with her for some great length it was finally de-
cided that I should take that position. The cap-
25972 italization of Hercules is about 29,000 shares of common stock. I think the exact amount is 28,724. Mrs. Kind and her immediate family own about 25 percent of that stock. The Wolf family, Senator Wolf, owns about 30 percent. I own a little over 1,000 shares. The rest of it is distributed among about 200 stockholders with an average of about 50 shares a piece. Hercules is not a sub-

sidiary of any other company and no other corporation at all owns any stock in it. Hercules is not affiliated in any way with any other cement producer or selling company and no other cement company has any voice in the management or the affairs of Hercules in any way. The other
25973 officers of Hercules are Isidore Kohn, vice-president, D. S. MacBride, vice-president in charge of sales, Charles N. Noble, treasurer and Morris Wolf secretary. Hercules was organized in 1916, I think.
25974 It started out as a new company but it bought a partially completed plant. The present main office is in Philadelphia and we have an office in New York. We have no warehouses or silos except at the mill for the storage of cement. Hercules has one mill. The railroad station is Hercules, Pa., but the plant is within the borough limits of Stockertown, Pa. but the mail goes to Nazareth, Pa. That is in the Lehigh Valley. The main reason which led to the choosing of Hercules, Pa. as the site for that mill is that it is the site of a very good deposit of cement rock. Cement has been manufactured in that location, in the immediate vicinity of Nazareth, Pa., since 1898. At Stockertown there was a mill about a mile outside of the
25975 town which I think was started in 1900. The Northampton mill which was started in 1900 went out of business a good many years ago. It did not own any of the property on which Hercules' mill is located but the men who controlled Northampton property controlled the company that did own the site and the half completed plant after it was bought by Morris Kind. The Northampton mill was being built just about the same time as the Dexter plant while I was at Dexter during the course of the construction there. With respect to Hercules acquiring the land of the Northampton Company, it acquired the land really that was owned by the Atlantic Portland Cement Company which was controlled by the same men who controlled the Northampton Company. The Northampton Company, while it was erected at the same time as Dexter, had not gotten along very well and the men who owned it, I think, sold it to New York interests which, I think, were connected with Metropolitan Life, and then Irving A. Bachman and William J. Dingee, the men who con-
25976 trolled the Atlantic Portland Cement Company started to erect a plant now owned by Morris Kind.

They came east from California and bought the interests and control of the Northampton Company. It was only a small plant and Bachman wanted to be one of the big men of the industry so that he bought this property on which Hercules is now located and started to erect this plant but he lost his money, became bankrupt and committed suicide and Morris Kind bought the property on which this plant is now erected from the bondholders of the Atlantic Company, the half completed plant.

25979 Q. From this drilling, going on from that point without going into further detail about it, let me know the result of that drilling. How much of a supply did you estimate you had?

A. I satisfied myself that we had at least 25 years' supply of a first class rock.

Q. You gave us the names of the officers of your corporation. Did any of these officers have anything to do with the selling of cement?

A. Donald H. MacBride is in charge of sales.

Q. Did any of the others have anything to do with it?

A. None of the others had anything to do with it at all.

Q. You have already told us, Mr. Brobston, that your company was located there, at least, for one reason, because of these deposits. I neglected to ask you at that time about the proximity of markets.

Do you know of any location nearer to large markets than this location that you have?

A. I know of no deposit of rock.

Q. Of rock supply?

A. That is nearer to large markets than the one we have.

Q. Into what States do you normally ship your cement?

A. The New England States south of Maine—

25980 we don't get into Maine—the southeastern section of New York State, the eastern section of Pennsylvania, New Jersey, Delaware, parts of Maryland; you might say occasionally the District of Columbia.

Q. Do you ship into New Hampshire?

A. Very little.

Q. I want to call your attention to a Commission's Exhibit No. 1063-C. It appears from that exhibit, Mr. Brobston, that you received from the Government an invitation to bid on a W.P.A. project at Rolling Forks, Miss., and that you did so bid.

A. What did you say, Mr. Leisure? That we did so bid?

Q. That you did not so bid. Excuse me. And since you have been with the company have you ever shipped any cement into Mississippi?

A. No, sir; Mississippi is far beyond the limits to which we can ship.

25981 Q. Have you ever declined to quote to any State Government on business within your marketing area?

A. Not to my knowledge, if it was within our marketing area.

Q. With respect to where you do sell your cement, Mr. Brobston, do you have any so-called principal or chief market?

A. The largest market, of course, is the metropolitan market of New York City, Boston, and around Philadelphia.

Q. Well, then, where do you do the bulk of your business?

A. The bulk of the business is done in Massachusetts, Rhode Island, Connecticut, portions of New York State, eastern part of Pennsylvania, New Jersey, a little bit into Delaware, and a little bit into Maryland.

Q. What proportion of your business does that amount to?

A. The States I have mentioned?

Q. Yes.

A. Oh, I should say—I have never figured it. I should say that was over 95 percent of our business. In fact, I think it is almost 100 percent.

25982 Q. Well, then, since those are your principal, why don't you change your plant and put it nearer it nearer those markets?

A. Well, I think the plant is as near those markets as it is possible to get. Of course, I suppose you could build a plant alongside of New York and send your raw material down to it, but if you did you have to send down 600 pounds of raw material, whereas—

Trial Examiner Norwood: You mean you don't move nearer the market is because your raw material is where it is; is that right?

The Witness: Yes, sir. What I was saying to Your Honor was that if we had to ship 600 pounds of raw mate-

trial to a market it would be more than shipping 376 pounds.

Trial Examiner Norwood: That answers the question. It isn't necessary to answer any more than that.

The Witness: I thought you wanted to know why.

Trial Examiner Norwood: No. I just want you to make direct answers.

The Witness: I see.

By Mr. Leisure:

Q. Now, in these principal markets where you sell your cement, you find competitors there also selling at the same markets?

A. Yes, sir; we find a great many competitors.

Q. How many competitors do you find in the 25983 markets where you have described is your normal sales area?

A. Well, from 15 to 20 competitors in the entire market, and maybe seven or eight get into parts of those markets.

Q. In your normal sales area, who are your competitors?

A. I will try and remember all of them, Mr. Leisure: Atlas, Alpha, Lehigh, North American, Penn-Dixie, Lone Star, Glens Falls, Edison, Vulcanite, Nazareth, Keystone, Lawrence, Whitehall, Coplay, Giant, National, Allentown.

Q. What about Medusa?

A. We come into contact with Medusa in certain parts of the territory. As I said, there are a number of others that we come into contact with in parts of the territory.

25986 Q. Now, you have told us about your general marketing area,—take one market, for instance. How many sellers do you find yourself competing with in the average, in any single—

A. I should say fifteen or twenty.

Q. And is that true with respect to prospective business with the Federal, State and municipal bodies?

A. Yes, sir; that is true.

Q. Does the same condition obtain with respect to your dealer business?

A. Yes, sir.

25987 Q. Mr. Brobston, do you have salesmen in all of the sales territories that you have described?

A. We do.

Q. Is your company, as companies go, is it a small company or a large company?

A. Our company is a small single-unit company.

Q. And as to your set up, it being a small company, do you have a general sales manager?

A. Yes, we have.

Q. Who is he?

A. Donald H. MacBride.

Q. What is his experience? Where did you get him?

A. I got him from the Lone Star. He was in charge of the sales of incor at the Lone Star at the time I got him.

Q. As to these conditions that you have described in selling, what has been your experience? Are you employing more or less salesmen than you did when you came with the company?

A. We are employing six more salesmen than we did when I came with the company.

Q. Have you had any occasion to observe whether that situation obtains with respect to any of your competitors?

A. The reason that I had to increase the sales force was because my district managers and my sales manager, whenever I would go after them to increase our sales, would claim that the other companies were increas-
25988 ing their sales force, and we were not getting as much business as I thought we ought to get, and as I wanted to get. And from 1933, when I came there, to 1937, I put on six additional men. That is, I raised the sales force from 18 to 24, and since then we have made a number of changes to improve the quality of the force. In cases where men did not produce, we have had to put in other men, so that our sales force has been changed—

Trial Examiner Norwood (Interposing): I think you have already answered that question.

By Mr. Leisure:

Q. From what you have said, I take it, Mr. Brobston, that your sales force expenses have increased.

A. Very materially.

Q. You have told us what your past experience has been, to some extent. How long have you been a cement executive?

A. I was made secretary and treasurer of the Dexter Company, I think, in the summer of 1900.

25989 A. And I have been a cement executive ever since.

25990 Q. Now, you were starting to say something about the policies. Who, at the present time, in your company, Mr. Brobston, determines the marketing policies of the Hercules Corporation?

A. I determine the general policies.

Q. Do you attempt to confine your shipments within any definite limits?

A. No, sir.

Q. Have you set any defined territory beyond which you will not go?

A. No, sir.

25991 Q. All right.

Now, since you, Mr. Brobston, are in charge of the policies of your company—how do you determine the extent of the territory in which you will solicit business today?

A. We will sell in any territory in which the mill net we will get will be sufficient to show us a profit, or—

Q. That is, it is dependent upon the mill net you 25992 will realize?

A. Yes, it is dependent on the mill net we will realize, except, of course, we might take a low mill net in some cases to increase the total of our sales.

Q. But those—

A. There are other cases where, for instance, we might go where our mill net would not be satisfactory, but it is a contractor customer whom we do not want to lose.

Q. Does the volume of your consuming market have anything to do with it?

A. Yes, we would not waste money in trying to sell in a market where there wasn't sufficient demand for cement to pay us the expense of selling it.

Q. You say the expense of selling it. What about the cost of getting the business?

A. Well, I consider the expense of selling it the main part of the cost of getting it, Mr. Leisure.

Q. Do you take into consideration at all the service you are able to render?

A. Well, the service is more apt to prevent our getting it. I mean, we would not care about the service, but in a great many cases we cannot render the service that other companies render in that particular territory, and, therefore, we cannot get the business. It is not that I don't want it, but I can't get it.

25993 Q. Well, as to your long period relationship with a customer,—does that affect your business?

A. I think I mentioned it, if it was a contractor that we had been doing business with for years, we would go out farther even if the mill net was not very satisfactory, we wouldn't want to lose that contractor.

Q. You say if the mill net was not satisfactory. Just what do you mean by mill net?

A. I mean by mill net the figure that we realize at the mill after deducting the freight to destination, and the packages.

Q. Is that your price?

A. No, our price is what we charge to destination.

Q. Well, in your sales—do your sales' expenses vary?

A. Yes, sales expenses of course will vary with the volume of the business, and the cost of getting it.

Q. Now, when you are considering these matters as head of your company, in your every day work, do you consider that your mill net is the same as your net profit?

A. Oh, no, mill net has nothing to do with net profit.

Q. Well—

A. To ascertain—

Q. Go ahead.

A. To ascertain our net profit we would have to deduct all expenses of manufacturing and selling, and over-
25994 head, from the mill net.

Q. Well, when you use the term "overhead," what do you mean by overhead?

A. When I use the term "overhead" I mean general administrative, financial expenses, any expenses that cannot be allocated to one particular department.

Q. Do you have any minimum mill nets below which you will not go?

A. No, sir; we have not.

Q. Well, what has been your experience over the period of years,—do you ever go into territory where you do not realize any profit after deducting manufacturing costs and overhead?

A. Yes, we have in a number of cases. For instance, at Boston,—we didn't make any money on sales to Boston for some time, but we could not abandon that market or we wouldn't have gotten it back again. While we were losing money in that market I figured that everybody else was, and that eventually the prices at Boston would be better, so that I stayed in the market.

Q. Now, you have told us about the market in the Hercules Company; was that the same market in the Dexter Company?

A. I am sorry; I did not get that.

Q. You told us about the natural market that you sold in with the Hercules Company. I am merely asking you if that is the same market in the Dexter Company, or, in other words, what was the market in the Dexter Company?

25995 A. When I went with the Dexter Company the market was very much wider than that. In the Dexter Company we shipped—I remember shipping to Duluth, Minn; we shipped to Omaha, Nebr.; we shipped to Charleston; we shipped to New Orleans; we shipped to Dallas, Texas.

Q. What about the eastern section?

A. The eastern section,—we shipped to most of the eastern sections of the United States.

Trial Examiner Norwood: At what time was that?

The Witness: That was when I went in the business, Your Honor.

Trial Examiner Norwood: What years?

The Witness: About 1900, from then on.

Trial Examiner Norwood: And then on to where?

The Witness: What say?

Trial Examiner Norwood: From then on to what time?

The Witness: Well, it was a gradual change, Your Honor,—some markets we keep longer than others.

Trial Examiner Norwood: I see.

The Witness: That is, as new mills were built that were nearer those markets we had to drop out; we couldn't get enough from those markets to pay us.

By Mr. Leisure:

Q. The Examiner just now asked you until what time. What was your experience? Did your markets in-

25996 crease or decrease as time went on?

A. It decreased markedly, Your Honor, the extent of territory, Your Honor. The extent of territory in which we could sell decreased very markedly.

When Dexter first started up, they made about 500 barrels a day. That was gradually increased. It went up to 800; and then I think the next step was 1300, and then we gradually got up until we made 3900 and 4000 a day, or

about 1,300,000 barrels a year at the Dexter. I will have to think about what cement plants were operating in the vicinity of the Dexter plant when I went with the
25996 Dexter. It [there] was the Atlas mill, the Alpha mill in New Jersey; the Vulcanite mill in New Jersey, the Nazareth Cement Company mill; the Northampton was built just about the same time as ours; the Phoenix was built about the same time as ours; the Penn-Allen and the Pennsylvania mills were built a little later. I should say they were built about 1904. And then when you got further over to the river I think I mentioned Atlas. Then there was the Lawrence, the Lehigh and the Giant. That was then the American Cement Company, the Giant at that time. There may have been others. There was Bonneville. I don't know whether I remember any more or not. The American is now the Giant. I mentioned that. That is now the Giant. The Bonneville Portland Cement Company went out of business in the early days. Their quarry was sold to the Lawrence. All of these mills that I have described were within a radius of 15, 20 miles from
25998 the Dexter plant. Outside of the Lehigh Valley, there were plants on the Hudson River at that time [which] competed with Dexter in New England and in New York. Dexter competed with those plants, I think, at that time. There was the Knickerbocker, there was the Alsen, Cayuga Lake, Helderberg. There may have been one or two more but I don't know that I can remember any more. At that time I don't remember that Dexter was competing with any others in New York State outside of the Hudson Valley. I don't think Helderberg is right on the Hudson, but it was near there. The Dexter was a small plant.

25999 Since I have joined the Hercules Company, we have practically abandoned the Washington, D. C. We have practically abandoned Buffalo, Oswego. We don't get into Maine any more. In Washington the reason was we failed to get any more business. We are just out of the market there. In Oswego my recollection is that that was due to the fact that they came in with trucks or bins; I don't remember which. In Buffalo, there are a number of mills that serve that city better than we can. There has been a mill built up in Maine. We have not been able to compete in the markets of western Pennsylvania. We do not compete there today. We compete in all of New Eng-

land except Maine, but we have very little business in New Hampshire or Vermont. The mill net is not the only factor in determining where we go for our business. For instance, there are points in western Pennsylvania that we might still sell, but the service from the mills right there is so much better than ours that we can't get in there. For
26000 instance, in western Pennsylvania we might take four or five days to deliver an order, when any one of the mills out there can have it delivered in a day. The mill net, of course, is the main factor but service also enters into it. I think we shipped one small car into the District of Columbia last year, and one small car this year. At the time that I went with Hercules, we made an effort to compete or meet the market conditions we found prevailing in Washington, D. C. In Washington, D. C., of course, the Lone Star Company had established bins, and a number of private individuals had put up bins which they rented to other cement companies. When I asked our district sales manager why he did not get any business in Washington, he would always tell me that he could not get it because we did not have the facilities. So finally I put up a small loading plant in Washington, but we could not get any business to pay us on it. We ran it for a couple of
26001 years; and then we could not get any business to pay it and I abandoned it.

Examination by Trial Examiner Norwood.

That was not on account of the price situation. The other companies down there had better facilities than we had. I think our price was not any higher than theirs. As near as I could tell it was not.

Examination by Mr. Leisure.

After I spent $3,000 there, I thought that that was enough, so we took the plant back to the mill. We are now south of Maine. I mentioned Buffalo; the erection of the bins in Buffalo having made our service so poor there we got very little any more. We can still ship into most of New Jersey; in fact I think all of it. We ship to most of Delaware.

Q. What is your policy, then, Mr. Brobston, and your practice in doing business in these market

areas? Do you or do you not make delivered prices
26002 which are competitive with plants that have lower freight rates than you have?

A. We do.

26005 Q. What was your employment there when you first went with the Dexter Company, Mr. Brobston?

A. I was in charge of the office. I moved the books from Philadelphia up to the Nazareth office and had charge of that office, kept the books, and was in charge of that office when we made our first shipment. I looked after the entire details of the first shipments we made, went down and saw them packed, took the bill-of-lading down to the station, and then billed it and invoiced it to our general sales agent.

Q. You have told us that this Dexter Company sold through a sales agent. Do you mean by that that the sales agent was the distributor of all of the output of the Dexter Company?

A. The sales agents, Samuel H. French & Company, in their agreement with us, agreed to dispose of the output of the Dexter mill. They were the sole sales agent.

26006 Q. When was that, please?

A. That was made in 1900 for 5 years; it was renewed in 1905, and renewed again in 1910, expiring in 1915.

Q. Do you know, Mr. Brobston, how this agent marketed your cement?

A. Oh, yes, I know how he marketed the cement. He sold it almost entirely through distributors. He sold through Tompkins Brothers, the H. Wells Lime Company, and he acted as a distributor in certain territory himself.

Q. During the period, let's say, from 1900 to 1915, did you or did you not make sales to contractors?

A. We may have to a very limited degree. I remember very few sales contracts.

26007 Q. Well, am I to infer from what you said that there was or was not always a distributor between your sales agent and the dealer?

A. There was in practically every case under the French contract. The H. Wells Lime Company was distributor for the entire New England States. Tompkins Brothers were distributors for northern New Jersey and Long Island, and part of the southeastern towns of New York State. French, himself, was a distributor for southern New Jersey and eastern Pennsylvania.

Q. Well, I am merely trying to get what the set-up was. Do you mean that the sales agent got the distributor's commission as well as the general sales agent's commission, or what do you mean?

A. Where he acted in the dual capacity of a sales agent and a distributor, he got both the compensation for selling the cement and the compensation for distributor. In the other two territories the company, of course, got their compensation for acting as distributor and Tompkins Brothers got theirs, and the sales agent got the general sales commission on the sales to those distributors.

Q. Now, when you were shipping for French & Company, did they guarantee safe delivery of the goods?

A. Yes, they did.

Q. What was your practice, then? Did you regard the cement as belonging to you or being your property until it was delivered to the consignee at destination, or
26008 did you have some other—

A. Yes, we had to consider it that way, because claims were made on us for any loss or damage, and if the man that the car was shipped to did not take the car, why, we had to pay the freight to bring it back.

Q. What is the situation today, Mr. Brobston?

A. The same situation.

Q. As to—

A. Oh, I beg your pardon.

Q. As to the attitude of your customers with regard to the loss or damage to goods to transit? I am talking about the Hercules Company now.

A. The situation is the same as the Dexter.

26010 Q. I do not want to ask you about the attitude of your customers. I want to ask you how you regard the sales today,—what has been your experience? Are there claims made on the basis that you own the goods, or that you do not own them in shipment?

26011 A. I am still allowing claims for damage, and still consider the goods our goods until they are accepted by the customer.

Q. Just as you did in the period when you sold—

A. Just exactly as we did when we sold with Dexter.

Trial Examiner Norwood: Then your customers make claim against you, and let you make the claim against the railroad?

The Witness: Yes, sir; the customers send in—if a

customer sends in to us proper papers to establish the claim, we send them a credit memorandum and then we make the claim against the railroad to reimburse ourselves for the credit we have given them.

26013 By Mr. Leisure:

Q. Now, you said this contract with the French Company, and your method of marketing thereunder, expired in 1915; was there any change in the method in which cement was marketed after that?

A. We continued to sell the few I have mentioned, the H. Wells Lime and Tompkins Brothers, but in the territory in which French had been a distributor we put on our own salesmen and sold the dealers direct.

Q. Now, from 1915 until the time—up until, say, 1926, what arrangement did you have for marketing cement?

A. As I stated, we had arrangements for distributors with Limes Company and Tompkins Brothers, and we sold direct in the other territory, the sales being under the charge of a sales manager, Mr. Raymond W. Hillis.

Q. Oh, I thought that was the name you used a moment ago.

A. No, I haven't mentioned it; I don't think I have mentioned it before.

Q. When Mr. Hillis took charge, did you continue to use distributors?

A. Yes. Mr. Hillis, I might say there,—Mr. Hillis had been in charge of the sales for French & Company. He had left French & Company shortly before the contract expired, and when the contract expired he came with
26014 us and he carried on practically the same sales' policies that French Company had carried on when we had the contract. He was fully familiar with all French's sales management.

Q. You continued to use distributors,—were they large or small buyers?

A. The distributors,—those two distributors took from three to four hundred thousand barrels of cement a year.

Q. And did you sell to them for distribution to any point in the country?

A. No, the distributors, the Limes Company—the Limes Company could only sell in New England; the Tompkins Brothers could sell in the territory that I have mentioned,—I have already outlined that.

Q. Well, what did you do with the rest of the territory in which you sold your cement?

A. We used our own salesmen under Mr. Hillis to sell the dealers that had formerly been sold through French & Company.

Q. Did you sell direct at that time to any States, or other consumers?

A. At which time do you mean, Mr. Leisure? Prior to 1915?

Q. From 1915 to 1926.

A. I think we did, in some cases.

Q. Could you tell us what part of your output was taken by distributors during that period of time?

26016 A. Between three and four hundred thousand barrels a year, as I recall it.

By Mr. Leisure:

Q. And that would be a part of what total, Mr. Brobston?

A. Our total output at that time was about 1,300,000 barrels.

Q. And can you tell us whether or not these distributors, in turn, sold all the cement, f.o.b. or delivered prices?

A. You mean now the period prior to 1915 to 1926?

Q. Yes, that is right.

26017 Trial Examiner Norwood: Yes.

A. Yes, sir; they sold it at delivered prices.

Q. Now, did you have any other customers, other than distributors, or—let me put it this way: Apart from your distributors, what, if any other class of customers did the Dexter Company have during that period of time?

26019 A. We had an extensive dealer trade, Your Honor.

By Mr. Leisure:

Q. Now, you have told us your experience with the salesmen during the time you have been with Hercules. I want to ask you during the period from 1915 to 1926 did the number of your dealers increase or decrease, if you know?

A. The number of dealers increased in that period.

Q. And as to your sales through distributors from 1915 to 1926, can you tell me, of your own knowledge, whether or not they increased or decreased,—I mean, a comparison of your shipments to distributors during that period of time?

A. I don't believe I could tell you that, Mr. Leisure; I think that it ran along about the same. I don't believe that I can make a positive answer on that, Your Honor.

Q. Then, let me ask you: Did the proportion of your shipment through distributors in 1915 compare with
26020 the proportion of your shipments through distributors in 1925? How did they compare?

A. Well, prior to 1915 our shipments through distributors were very much heavier.

Q. Yes.

A. But we did away with many of the distributors, when we started to sell our goods in 1915, so after 1915 the proportion of our sales through distributors was less than prior to that.

Q. Did there come a time when you started marketing your cement with dealers?

A. Well, we—as I—we always sold to dealers in all the territory except that covered by the two distributors.

Q. You told us you started that at some time,—I was leading up to how you came to start marketing through dealers.

A. French & Company always sold to dealers. They were in the general building material business, and they had dealer contacts all through the territory in which they were distributors, and we merely continued to sell the same dealers that French had sold before, using every effort to increase the number of them.

Q. What about today, in marketing the Hercules products,—have you any general sales agent, or distributor?

A. No, sir; we sell all of our cement directly to our own salesmen today.

26021 Q. You say direct,—you mean you sell direct to your dealers?

A. Yes, sir.

Q. Is there any other middle man between the manufacturer and the consumer?

A. None, except the dealer.

Q. Other than your dealer?

A. As far as we are concerned. I cannot answer for other people, Mr. Leisure.

Q. As to these plans, Mr. Brobston, you have told us of this one method of marketing when you were with the Dexter Company. Now, you have told us of this more direct selling at the present time.

What have you to say as to these two methods, in your experience,—which is the more practical, if you know?

A. Well, we think that our method of selling today is very much better in every way. We think there is less cost to the consumer, because there is only the dealer instead of a general sales agent, and the consumer,—between us and the consumer.

Q. And you mean by that, selling to the dealers today—

A. Yes, sir; selling to the dealers leaves only one step between us and the consumer, where there used to be three steps.

Q. Now, I tried to approach the point a moment ago about when you first started doing business with
26022 dealers. I want to come back to it.

Can you tell me how long it has been the practice,—your custom, at least,—to market cement through building material dealers?

A. Ever since I have been in the business, Mr. Leisure.

Q. Without going into the subject, I suppose you consider the dealer an important customer,—will you tell us just why, without going into detail?

A. The dealer is by far our most important customer, Mr. Leisure. I think approximately 90 percent of our cement is sold through the dealer. It is our regular outlet for our business, and, as I mentioned to you, French & Company sold to dealers from the day we started, and it is the only practical way I know of to sell our cement.

Q. As a manufacturer, have you or have you not observed any advantage as to service by selling through dealers?

A. We couldn't possibly sell to the customers that the dealer has without an expense which would be absolutely prohibitive; we have never got the information that the dealer has—

26023 Trial Examiner Norwood: I think the point has been well covered. I think that any additional testimony from this witness as to the desirability of dealers, as affecting cement companies generally, selling a larger percentage of their output to the dealers, any such testimony as that would be cumulative.

He may make the statement here that it is the same with his company, but it seems like we are wasting time on that.

Mr. Werle: The same as what?

Trial Examiner Norwood: Nobody disputes that; nobody disputes that.

Mr. Leisure: Does Your Honor mean by that that when one company has completed its testimony as to whether or not dealers are important, that when a separate defendant gets on the stand he is foreclosed from saying that dealers are important to him?

Mr. Wooden: Well—

Trial Examiner Norwood: That is a fact that is not disputed as to any of them.

Mr. Wooden: I will make it unnecessary by
26024 agreeing to stipulate that the dealer trade, for all Respondents, if they want it that way, is an important factor in their business.

Mr. Wooden: The greater the importance of the dealer the more probable it is that they defer to the wishes of their dealer, as they have done, and as we approve for them to do.

26025 Trial Examiner Norwood: It is a large and substantial part.

Mr. Wooden: Yes, that is true.

Trial Examiner Norwood: Of the business of every Respondent.

Mr. Wooden: Yes.

Trial Examiner Norwood: Why try to prove that any more? He has admitted that.

26026 By Mr. Leisure:

Q. Well, you didn't tell us what service you had in mind.

26027 A. The dealers know the credit of their customers. They have yards; they have warehouses; they have trucks for delivery. None of these things we have, and we could not have them without the expense to the public which would be enormous.

Q. Well, now, what has been your actual experience? You say you have sold to dealers ever since you went into business. What has been your actual observation as to whether or not it is as economical to distribute through dealers as to sell direct.

A. I think that is the only practical and the most economical way to sell our product, Your Honor.

By Mr. Leisure:

Q. Now, during this long period of time that you have been dealing with dealers that you have told us about in the marketing of cement, have you in any way adopted or mod-

ified any of your policies as to the protection of your dealers?

A. I would say that practically all the moves we have made in the changes of policy have been for the protection of the dealer and to enable us to sell more cement to the dealer.

26028 Q. Now, you told us that you had a great many more dealers at the end of the period in 1926, when you were with the Dexter Company, than in 1915. Apropos of Mr. Wooden's suggestion a moment ago, how does the number of your dealers compare today with your own company, the Hercules, with the number you had, say, when you first came with the company?

A. Now, wait a minute. Are we still talking about Dexter or are we talking about Hercules, now?

Q. No, Hercules. How does it compare today, the number of dealers that you have?

A. Today?

Q. Today compared to the number you had when you went with the company?

A. Why, that has increased very materially since I have been there.

Q. Mr. Brobston, I show you Respondents' Exhibit 1084, and ask you to tell us what it is.

A. That is a compilation made up for me by our sales department showing the proportion of sales made

26029 through dealers in the year 1935, '36, '37, and '38.

Q. And can you vouch for the accuracy and correctness of the compilation?

A. What did you say?

Q. Can you vouch for the correctness and accuracy of this compilation?

A. It was taken from our actual records.

Q. Actual books?

A. Yes, sir.

(RESP. EX. 1084 was offered and received in evidence.)

26040 Washington, D. C.,
October 31, 1939.

26041 JOSEPH BROBSTON thereupon resumed the stand and testified further as follows:

Direct Examination by Mr. Leisure (Resumed).

Q. Mr. Brobston, when we adjourned we were discussing the subject of contractors. Does the Hercules Cement Company do business with contractors?

A. Yes, sir.

Q. Without spending a series of questions on it, I would like to find, if we can, how it compares, your number of contractors today, with earlier days.

26042 A. We sell a great many more contractors today than we did at the time I was with Dexter.

Q. Does your company render any services to those contractors in connection with your sales?

A. Yes, we follow up all jobs very closely through the different agencies and lettings. We send out word of these jobs to our salesmen who contact contractors in their territory; call their attention to these jobs and see if they are interested in bidding on them. If they are, the salesmen will take them up to the site of the work, and if the man is interested at all in the job the salesman will then get them such information as he can for them, such as finding if there are raw materials; if aggregate is in the vicinity; the best place to get water; if the railroad has a siding there. If not, he will contact the railroads to see if they will put in a propor siding. Then, if the man decides definitely he will bid on the job, he will find out what the local conditions are for him. If he gets it, he will find out about machinery for the job. They will often know of second-hand machinery in the vicinity that can be used on a new job.

26043 Q. You described certain services that you rendered to contractors. How long have you been offering services to contractors?

A. Ever since I was with the Hercules Company.

26044 Q. What do you mean? What kind of advice?

A. For instance, in the case of contractors, if he

is a regular customer of ours, he would advise him as to the amount of aggregates required at the job as to the—

Mr. Wooden: Your Honor, I am a little late in my objection, but it is obvious that the same line of inquiry is being pursued to which Your Honor sustained an objection when I made it a few moments ago.

Trial Examiner Norwood: I think so.

If Counsel can show me any good purpose for this testimony, we will let it in, but I cannot see it. It seems to me that we are just wasting time.

26045 Mr. Leisure: I think it is very apparent that service in the selling of any commodity affects the price, and it goes right to that basic element in this case. It also indicates competition, which is also one of the basic principles in this case. It also indicates price leadership, and I cannot think of any series of questions that I could ask that would be more material and relevant than this.

Trial Examiner Norwood: Do you propose to show that other Respondents did not give this particular service?

Mr. Leisure: I am not proposing to show anything as to other companies at the moment. I am just trying to take the separate defendants and let them put in their own defense as we come to it; but, as a matter of fact, if Your Honor wants me to cast my imagination ahead as to what may come, I want to point out that in the industry it will be apparent when we have finished that different companies are constantly doing things of this kind, trying to get ahead of the other fellow a little bit, which I think shows clearly that there is competition, and price competition, and this is the type of thing that negatives, I believe, the Government's whole case, that we make our prices

26046 as a result of collusion.

Mr. Wooden: Your Honor, it has never been the theory of the case, or of the complaint, or of the Commission's Counsel, that 100 percent of every conceivable kind of competition has been eliminated by the alleged combination. It is simply certain kinds of competition, chief among them price competition.

We never contended, as I say, that 100 percent of every conceivable form of competition has been eliminated.

Trial Examiner Norwood: I do not think it is charged that the Respondents do not compete with each other in every way, except price, and I do not recall any evidence having been adduced to show a lack of other kinds of competition, salesmen's competition—

Mr. Leisure: Well—

Trial Examiner Norwood: —and in that case I do not see why you have to meet anything along that line.

Mr. Leisure: Well, if Your Honor please, I want—it is rather a long record—and I want to call your attention to two things that I have in mind.

In the first place, Mr. Wooden says "we have never charged certain things." I can only be guided by the four corners of his complaint as to what we have to meet under it, with respect to that, and not what he says during the course of the trial.

26047 Paragraph 4 of the complaint reads as follows—which I am sure Your Honor is very familiar with: "For more than eight years last past Respondents have maintained, and now have in effect, a combination among themselves to hinder, lessen, restrict, and restrain competition in price."

Now, there is a definite charge—restraint of competition in price.

Trial Examiner Norwood: Yes.

Mr. Leisure: Mr. Viner, one of the Commission's own witnesses, testified at page 15749 of the record that services were a form of price competition. Now, with that having come from the mouth of a Government—well, a Commission's witness—they are privileged to quote that in their brief, and it is necessary for us to meet that testimony and this charge in the complaint.

I do not see how it can be disputed that that service does affect price competition—is a part of price competition. Mr. Viner has so testified. I do not think any witness that would be called on either side would dispute that.

26048 Trial Examiner Norwood (Interposing): Now, that factual statement there would tend to uphold what the Respondents' Counsel has said. If the Commission is going to contend that there is a similarity, although an immaterial difference, in the services they render to their customers, then the Respondents should be permitted to disprove that, but my view of the thing is that this service competition, no matter what the experts say as to one aspect of the competitive situation, the testimony as to the services and as to salesmen's activities, is irrelevant in this case, and there is no use of our wasting our time on that, and I do not see why the Commission does not admit that they did have salesmen and service competition.

Mr. Wooden: We are perfectly willing to admit that they have competition in sales efforts. They did have salesmen try to get the business for the different companies.

Trial Examiner Norwood: Yes.

26049 Mr. Wooden: We would not for a moment contend, as I said before, that competition in every aspect has been eliminated. I am willing to stipulate that, and agree that we will not urge that every aspect and kind of competition has been eliminated.

Mr. Leisure: Well, of course, Mr. Wooden's offer of stipulation about salesmen is something totally different from the point we are talking about now. I think we could discuss that when we get to it.

Of course, salesmen do compete in various ways, trying to get orders, but, just at the moment I am addressing my attention to the services rendered by the manufacturing company, itself.

Now, I want to call Your Honor's attention to another place in the complaint which bears upon the subject we are now discussing, and that is count 1, paragraph 9, subsection (1), where it is stated that one of the effects of the combination has been: "To bring about the disappearance of prices arrived at through the play of competitive forces."

Now, these competitive forces are obviously to be found in—they are to be found among the members of the industry, between this industry and other industries, producing competitive materials, and it seems to me we are justified in bringing a complete picture to your attention, of

26050 this industry, so that the nature and extent of these competitive forces may be seen and measured so that it may be determined to what extent, if any, this, as the complaint reads: "play of competitive forces" has been restrained. This requires that there be given entire freedom to show the conditions under which the industry, as a whole, has been operating, and also the conditions under which each Respondent company operates.

Trial Examiner Norwood: You want to show that there is a play of contending forces without price variation; is that right?

Mr. Leisure: I think in many instances there has been price variation. I am not at the moment addressing myself to anything more than this one subject, at the moment, and that is whether or not it is material and relevant to the issues in this case to show that a Respondent which is on

the witness stand rendered certain services in connection with the sales made by his company.

26051 Mr. Wooden: We are willing to agree that there is competition in sales effort among salesmen. We are willing to agree that the services performed by the different Respondents are not always the same in kind or degree.

26053 Trial Examiner Norwood: I will say I am not going to spend time here hearing testimony about these engineer services, and things like that, where there is no charge that the Respondents attempted to render them uniform, or attempted to suppress that particular kind of competition.

Now, we understand about this truck business because that goes directly to price, and to the pricing method, and I am going to rule that out as irrelevant.

Mr. Leisure: I want to call to the Examiner's attention that this complaint is based on the Sherman Antitrust Act, and that the complaint goes far beyond any charge of mere price competition, and I also want to call the Examiner's attention that the Commission has taken a position of what price competition was, as they presented their case.

Now, I don't believe that we are obliged to adopt the Commission's definition of price competition. I think we should be allowed, on both those grounds; first, on

26054 the ground that the complaint is based on the Sherman Antitrust Act, goes far beyond any charge of mere price competition; I think we should be allowed to adduce this testimony because of that fact; and, further, we are not called upon to adopt the Commission's definition of price competition.

Mr. Wooden: I just want to correct Mr. Leisure, or challenge Mr. Leisure's statement that the complaint is based on the Sherman Anti-trust Act. It is a complaint of alleged violation of section 5 of the Federal Trade Commission Act, and section 2 of the Clayton Act as amended by the Robinson-Patman Act.

Mr. Leisure: If the Counsel gets any comfort out of that statement, he is allowed to all he can find in it.

Trial Examiner Norwood: I think you had better get back to the issues in the case. I shall not hear any more testimony about these inconsequential things, things that the Commission has already admitted.

Mr. Leisure. Specifically, without characterizing them

as inconsequential, the thing I am addressing my attention to now, and asking I may proceed with, are the certain services rendered by this particular Respondent to its customers.

Trial Examiner Norwood: We have sufficient of that to complete the picture of it. It doesn't go to the 26055 issues.

Go ahead.

Mr. Wooden: Your Honor, if Mr. Leisure has evidence he wants to put in regarding other forms of service, he may proceed and we will consider what they are, but I have already agreed to stipulate that the various Respondents do not render the same kind nor degree of service, as to technical advice and sales effort, and such things.

Trial Examiner Norwood: And that there is competition in those services and in the services and in the salesman's activities?

Mr. Wooden: In those particular aspects, yes.

Trial Examiner Norwood: Go ahead. No use wasting any time proving that.

Go ahead.

By Mr. Leisure:

Q. Mr. Brobston, taking up another subject matter: Does your company have any rule or concept of what constitutes a dealer?

A. We have a general idea of what constitutes a dealer. Through long experience we know what a dealer is in the sense of handling building materials.

Q. Now, you say through long experience. Does that go back to 1915, as you have testified the other day?

A. Yes, sir.

Q. Does that mean that from that time,—well, tell us whether or not you sold to everyone during that pe-
26056 riod of time, or whether you had certain people that you classified as dealers?

A. We had a class of dealers distinct from consumers, and from other people, who might want to use cement. Our understanding of what a dealer was, was very distinct, and has always been.

By Mr. Leisure:

Q. Did you, from the time you have been in the business,—can you tell us whether or not you considered it

good or bad, or otherwise—good business to sell to a man who did not handle a reasonable line of building materials, for instance?

A. Ever since I have been in business it has been our policy to sell as a dealer only people who carried a real legitimate line of building materials.

Q. Well, what was the purpose of that, Mr. Brobston? What was the purpose of adopting such a method in selling?

A. Well, our best customer is the legitimate dealer. If we sell, for instance, a feed store in one town, the dealer in the next town who handles a full line of building materials won't give us any business. If we don't recognize the fact that regularly constituted dealers who have the facilities for handling cement are our customers, we
26057 will not get any business from them.

Q. Now, a moment ago, when I asked you about what constituted a dealer, I meant to bring out—I want to bring it out now, at least—what your definition is, if you had one— Did you have one?

A. Well, I don't know that we have a regular definition, but we have considered for many years that a dealer was a fully constituted building material dealer who had the facilities for handling cement, delivering it, storing it, warehousing it, in a town in which he operated.

Q. Do you have any hard and fast rule in that matter?

A. No, I wouldn't say we have a hard and fast rule. Each individual case—unless we know one to be a dealer—each individual case is investigated as our salesmen report on whether the man is or is not a dealer. When a salesman goes into a town he will find out who the building material dealers are in that town. When he reports to us he gives us the particulars as to their yard and their facilities.

Q. And you say "facilities."—are they or are they not those who are able to render the services of a retailer?

A. Those are the only ones that we sell, yes.

Q. Do you give salesmen any instructions with regard to this?

A. There is no hard and fast rule. The salesman is expected to report to us what he finds, and from his report we guess whether the man is or is not a dealer.

26062 By Mr. Leisure:

Q. In deciding these matters, Mr. Brobston—that is to say, in deciding who you will sell as a dealer—

do you consider whether or not he has been recognized by any other cement manufacturers?

A. That would be one of the factors entering into it. Our salesmen are directed to give us all the information they can as to whether or not a man is a dealer. If he reported to us that in looking over the yard he found Lehigh cement, or Alpha cement in that yard, it would be presumptive evidence that the man really was a dealer, but he would also give us the additional information as to whether the man had proper storage facilities, trucks, methods of storing it, and handling it.

Q. Well, have you ever discontinued selling any dealer because you learned that some of your competitors would not sell to him?

A. Not to my knowledge, sir.

Q. Has The Cement Institute ever had anything to do with your policy, or anything which affected your decision in any way as to whether you sold a man as a dealer?

A. The Cement Institute has nothing whatever to do with our policy as to selling dealers.

26063 Q. Do you consider yourself entirely free to exercise your individual judgment in this matter of selling to a dealer and not selling to him?

A. I certainly do.

Q. What is the policy of your company as to whether a dealer has membership in an association or building material organization of some kind,—does that in any way determine your action as to whether you will or will not recognize a man as a dealer?

A. We have no definite policy on that subject at all. Some of our dealers have always been members of associations; some are not. It depends entirely upon the dealer, but that has nothing to do with whether we will sell him, or not.

Q. Have you ever refused to sell a man as a dealer because a dealer organization requested you not to?

A. No, sir.

Q. Do you decide not to sell a man as a dealer because of protest from other dealers?

A. I might. It would depend entirely upon the amount of business I was getting from the dealers who protested. I think there have been cases of that kind come up.

I remember one case, particularly, that happened before Mr. MacBride came with us. That is why it happened to

come to my attention. One of our stockholders sent in a man to me who told me he was a dealer and who
26064 wanted to make arrangements to handle our cement.

I thought it was rather strange he came to me so I just put him off and went to our district sales manager and he said: "Well, if we sell this particular man you will lose the trade of a great many dealers in Philadelphia."

So I sent word to this stockholder who had referred the man to us, that we felt that we couldn't sell him. I felt that his business would not be worth nearly as much as the business we would have lost from other dealers, if we had taken him on.

Q. As to that, I think you told us a moment ago that in selling a man as a dealer or as a contractor you considered whether you would stand to lose more business than you would gain. Do you have more than one dealer in some towns?

A. We have no particular policy on that. It depends on the size of the town and whether we can get more than one, Mr. Leisure.

Q. Mr. Brobston, do you have any definite rule as to whether or not you would ship your product to more than one dealer in the same town?

A. I thought I had just answered that. We have no definite policy on that at all. As I said, it depends
26065 on the size of the town and whether we can get more than one dealer in the same town.

Q. I want to call your attention to a Commission's exhibit here, Commission's Exhibit 557. You can refresh your recollection, if you need to (handing document to the witness).

During the N. R. A. Code did you attempt to follow the Code of Fair Competition with respect to dealer policy?

A. We followed the Code where we were told by our attorney that we had to; that it was the law.

Q. Has there ever been any period since—I think 1915 was the date you used—since that time, when you have not sold some of your products direct.

A. No, we have always sold some of our products direct.

Q. What has been your experience with respect to that, Mr. Brobston, after 1915? Was there any increase or decrease in the number of consumers which you sold direct?

A. Yes. We have sold more consumers in later years. For instance, we started first, we sold the State direct, then

we sold contractors doing State work direct. There have been other cases where we have sold more direct than we formerly did.

Q. Do I understand from that that you are selling more direct today?

A. Oh, yes.

Q. Now, as to the beginning of that time: Were
26066 you following any plan of classification of business when you first sold direct?

A. I am not exactly clear what you mean by that, Mr. Leisure.

Q. Let me put it this way: In 1915 I think you started, then, with your experience in selling. I am trying to find out whether in 1915, and the years following, were you following any plan of classification of business?

A. Well, we sold to dealers and to consumers. I think I have outlined what I thought a dealer was, and, as I say, we sold to some large contractors. We sold the Government direct and we sold the railroads direct, and, as I mentioned before, later on we sold to State Governments and to contractors for State work.

Q. Then you sold some customers direct. What was your purpose in selling some customers direct?

A. Well, the main purpose in selling some customers direct was because we couldn't get the business if we didn't because other companies were selling them direct, and we would have lost the business and the customers on those occasions.

Q. Any other reasons?

A. I think that is a good and sufficient reason. I don't know; I should think that would cover everything. It was a case of losing money and losing business if we didn't sell these people direct.

Q. This work that you did sell direct, was the
26067 work readily serviceable by dealers?

A. Oh, no, no. It was work that a dealer couldn't readily service or we would have sold the dealer.

Q. And did these classes of customers have the facilities necessary for handling the cement at the points of use; Mr. Brobston?

A. Yes. That was the real reason they were sold direct.

Q. Now, during this period of time in selling to railroads and to municipal and other governmental bodies,

what was the financial risk involved as compared with the risk that would be involved in selling to consumers who had to buy through your dealers?

A. The risk in selling the class that we sold direct was much less, financially, than it would have been if we had attempted to sell the customers of the ordinary dealer.

Q. Now, as to the prices you quote, when you said today that you would sell a customer direct does that or does that not mean that you would sell him at the same price that you would sell to the dealer?

A. Yes, we would sell at the same price that we would sell to the dealer.

Q. Do you ever receive requests for quotations on your product from people who don't fall within the class of persons that you sell direct?

A. Occasionally.

26068 Q. How do you handle that?

A. We either refer them to a dealer in the vicinity or we refer them to the salesman who takes it up with the dealer to see if he can secure the business for the dealer.

Q. Now, the complaint charges you Mr. Brobston—or, rather, your company is charged in the complaint with: "Arbitrarily and cooperatively made a division of customers into a class to whom you might sell direct and a class to whom you might not sell direct." That is paragraph 17 in the complaint.

Have you ever had any contact with your competitors in any way which influenced your action with regard to this classification of business, Mr. Brobston?

A. No, sir.

Q. And your present marketing policy, how do you regard it in the light of your experience? Is it to the best interests of your trade?

A. I consider that our policy today is to the best interests of the trade and, therefore, it is to our best interests. If my policy wasn't the best one to the interest of my trade, I couldn't get the business.

Q. Now, during the N. R. A. Code period, what did you do? Did you or did you not attempt to follow the Code of Fair Competition for the Cement Industry—

26069 Q. —with respect to classification of business?

A. I would say we followed the Code wherever we were told by our attorneys that we had to.

By Mr. Leisure:

Q. Now, as to this agent that you mentioned that you sold all of your cement to at a price per barrel, around 1900, was it?

A. 1900 to 1915, Mr. Leisure.

Q. Was that a flat mill price for all sales?

A. We made a price at the mill to French at which he could not sell below, without consulting us. He never sold above that price, but he frequently asked us to give him a special price below the mill base that we had given him, so that he could meet the competition at destination.

Q. From what you have said, then, in what way, if at all, did this price that you charged French & Company relate to your delivered price; I mean, the price at which you disposed of your product?

A. I am not clear what you mean by that question, Mr. Leisure?

Q. Well, you said the mill price which you charged French & Company was adjusted, and I am asking you whether or not it related to the delivered prices at

26070 which they disposed of your product.

A. The price that we made to French at the mill had the purpose of enabling him to meet the delivered price of our competitors at destination.

Q. What was the reason for any such provision? Why did you do that, Mr. Brobston?

A. Because we couldn't have sold our cement if we hadn't done it.

Q. What happened with respect to the freight? Did the Dexter Company absorb the excess freight, or what was done?

A. The contract we had with Samuel H. French & Company, in order to protect French who had guaranteed to dispose of our product provided that in cases where the freight from the Dexter mill was higher than the freight from the Atlas Mill, that we would absorb the difference in freight to destination.

Q. And how, if at all, did that affect the Atlas Mill at Northampton?

26071 A. It automatically made Northampton, Pa., a point, the delivered prices from which limited the net return I could get on my cement.

By Mr. [illegible]ure:

Q. And this started when, at what time?

A. The contract was made in 1900 with French & Company.

Q. There have been two names used in the record,—one Northampton and one Novarro. Where was the Atlas Company situated?

A. I think that the town of Northampton was originally called Novarro; but the Atlas Cement Plant has always been at Northampton, Pa.

Q. What about the Atlas Mill at that time? Was it a large or small mill?

A. It was the largest mill in the East.

Q. Now, going back over all of your experience, the 39 years that you have told us about, can you tell me of any time when Northampton has not been designated as
26072 a so-called basing point?

A. No, sir, it has been a basing point ever since I have been in the business.

Q. When you were selling under this arrangement with French & Company, did you meet only the prices of Atlas,—or what was the situation as to that?

A. No, we had to meet prices made by other mills just as well, or we could not have sold. We had to meet the destination prices made by Atlas, Alpha, Lehigh, Vulcanite, Nazareth.

Q. Now, in shipments by the Dexter Company, cement that went to Pittsburgh, for instance: How did that go? Was it for an account of a sales agent; or just tell me how you did do it?

A. Well, in sales to Pittsburgh, my recollection is that French & Company just sold directly for us, getting only their general sales agents' commissions. I don't think they sold in Pittsburgh as a distributor. The prices we made in Pittsburgh were for delivery direct to the dealer, the wholesale dealer in Pittsburgh.

Q. What are the earliest shipments that you can recall that you made at Pittsburgh?

A. I recall shipments to Pittsburgh, I should say it was 1904. I remember that due to the fact that I went to the St. Louis fair on the way out there. Mr. French asked us to make a price in Pittsburgh at that time of 40 cents a barrel to meet the prices. He said that was the best
26073 price he could get if we sold in Pittsburgh.

Q. What was your general mill price to them at that time?

A. At that time the price was 65 cents.

Q. What was the purpose—

Q. What was your purpose in taking this 40-cent rate in Pittsburgh, then, Mr. Brobston?

A. We wanted to move the cement.

26074 Q. We were just discussing, before the recess, the price of 40 cents that you said you made in Pittsburgh. Do you recall the incident?

A. Yes, sir.

26075 Q. How was your price of 40 cents determined?

A. It was the price at which French & Company told us we would have to sell them in order to get the business in Pittsburgh.

Trial Examiner Norwood: What do you mean by 40 cents—40 cents a barrel?

The Witness: Oh—yes, sir; 40 cents a barrel.

Trial Examiner Norwood: Was that f.o.b. mill?

The Witness: F.o.b. mill without packages.

Trial Examiner Norwood: Bulk cement?

The Witness: Well, it was shipped in packages but the package was charged above the 40 cents.

By Mr. Leisure:

Q. Now, Mr. Brobston, on this cement which you sold for delivery to Pittsburgh at that time, how did your mill price compare with the mill price you were getting on cement for delivery in Philadelphia and other eastern markets?

A. Our general price at that time was 65 cents a barrel to French.

Q. And what period are you speaking of?

A. From 1904 on. I mean, I don't know how long that 65-cent price was in effect. I couldn't tell you that, definitely.

Q. Then did you continue to ship cement to Pittsburgh after mills were erected near Pittsburgh?

A. We shipped for some years after that, but it

26076 gradually dropped of and finally we couldn't get in there at all.

Q. And when you say you couldn't get in there at all, do you or do you not mean that the price was lower there than you could afford to meet?

A. Well, it was not that the price was lower in Pittsburgh, but our freight to Pittsburgh was so much higher than the mills situated near Pittsburgh that we had to absorb so much of the freight to meet their delivered price there, our mill net was unsatisfactory and we gradually stopped shipping there.

Q. How did that situation then affect the mills at Pittsburgh?

A. It made them a basing point, automatically.

Q. Can you tell me whether or not the cement mills in Lehigh Valley have the freight rate, or did they have different freight rates to points beyond the Valley, at that time?

A. To points beyond the Valley, they were blanketed; all had the same rate.

Q. And how, if you know, did they affect, so far as competition with mills outside of the Valley was concerned; what effect did that have?

A. I am not clear on that question, Mr. Leisure.

Q. You just told us that you had a blanket rate outside of the Lehigh Valley, did you not?

A. Yes.

26077 Q. I am trying to find out what happened to the Lehigh Valley, as to whether or not it became a basing point.

A. Oh, the Lehigh Valley automatically became a basing point, but, as I testified, Northampton already was a basing point when I went in the business, and as the rates were blanketed, that made a Lehigh Valley base and mills outside the Lehigh Valley were in the same position as I was in competing at Pittsburgh.

Q. That was my question.

What has been your observation, Mr. Brobston, with respect to the establishment of new plants and new mills over the period of years? Do you or do you not find that new plants being built created new basing points, established new—

A. As plants were built all over the United States it brought the Lehigh Valley market closer in; we couldn't compete with the new basing points that were established. As mills were built it contracted our market.

Trial Examiner Norwood: Does that answer the question?

By Mr. Leisure:

Q. Well, do you mean by that, then, that new basing points were established as new mills were built?

26078 A. Oh, yes. As new mills were erected new basing points were established all over the United States.

By Mr. Leisure:

Q. Now, you have told us that at the time this Dexter Mill began to operate you made sales west of the Mississippi and South, and you gave us considerable territory that you covered and then you said that you were gradually forced out of these markets.

What happened, Mr. Brobston? What kind of prices were being made at that time with regard to your competition?

A. I don't understand what you mean. Of course, the price at the Dexter varied from time to time. I am not clear what you mean by that, Mr. Leisure.

Q. You told us that you were forced out of these mills because of your—I am trying to get you to tell us what happened that forced you out of the market; whether or not the prices were delivered prices from the new mills and what your experience was.

A. Well, the same thing happened in Duluth, Omaha, Charleston, New Orleans, Dallas; the same thing happened as did in Pittsburgh. As new mills were established the delivered prices, compared to the prices we could

26079 meet, made it necessary for me to absorb so much freight that I couldn't get into those markets.

Q. Now, passing to another subject, Mr. Brobston: How do you determine the price at which you sell your cement at any particular destination?

A. We get reports from our salesmen as to what prices they find in the various markets which they cover.

Q. And do you attempt to determine what the prices of your competitors are, in any way?

A. Why, yes. We have to know what their prices are or we can't meet them.

Q. How do you obtain that information?

A. From our salesmen in the field. They are up against that information all the time, as to delivered prices.

Q. Are your salesmen—is your sales force the only source of information concerning your competitors' prices?

A. Well, Mr. Leisure, we know what the competitive prices are generally from our knowledge of the market, and from the general reports that are sent in as to any change in price, we get that, not only from our salesman, but we get that from dealers or from contractors, but ordinarily everybody knows what the prices are there unless there is some change.

Q. Well, what has been your experience? What do the dealers do, if anything? You mentioned dealers.

A. Well, what do you mean? Do you mean in
26080 case of a change in price, Mr. Leisure?

Q. Yes, I mean as to the regular course, as to whether or not your dealers are interested in keeping you informed, and, if so, why? Tell me the circumstances surrounding your dealers.

A. Well, the dealers are just as familiar with the prices as our salesmen are. There is no secret about the prices. In the case of a change our salesmen hear of it right away, and if there is any change we are very apt to hear from dealers right away.

Q. What is the dealers' interest, with respect to that?

A. Well, the dealer wishes to be kept—if it is a decrease in price—the dealer wishes to be kept in competition with the other dealers in that town, and he will let us know right away. He may have a car in motion, and he would want us to—want to assure himself that we would allow him on that car, so that he would be kept in competition with people buying at the new base price.

Q. Now, you say that you knew about the prices from dealers, and you knew about them from your sales force.

A. Yes.

Q. Is there any other way that you knew about the prices of your competitors?

A. In any change in price we would be very apt to hear from contractors that we had bids outstand-
26081 ing with. If it was an increase in price they would want to know whether they were perfectly safe in bidding on the price we had given them prior; if it was a decrease in price they would want to know whether they could decrease their bid the amount of the decrease in the cement.

Q. Now, when a dealer informs you, as you just suggested does happen, do you consider the matter closed when a dealer informs you of such change in price?

A. Oh, if one dealer informed us we wouldn't consider that final at all. We would immediately get in touch with our salesmen, and have them check up with a dozen dealers, and if the quotation that the other dealers had conformed to the one we had heard, we would then judge that it was a definite change in price in that territory.

Q. Do you instruct your dealers to give you any specific information with respect to printed matter? Do they forward it in, or do you have any instructions as to that at all?

A. Well, we cannot instruct our dealers, so—

Q. I mean, your salesmen. I meant to say.

A. Oh, our salesmen, yes, yes, our salesmen are told to send us in all the information they can get about everything connected with the business in their territory. If a dealer will give them the quotations they have, they take it and send it right in to us. Some dealers will give them the quotation; others won't.

26082 Q. What about your competitors? Do your competitors ever provide you with copies of their quotations before—or at the time of issuing?

A. No, sir.

Q. There has been some testimony here concerning the length of time after a price change before the company knows about it. What is your experience? How soon after a price change has been announced do you usually learn of it?

A. Oh, we learn of it the same day, almost invariably, probably the same—well, what we would learn, suppose a company sent out quotations that would be received by the dealers the next morning, and our man—the first dealer out man called on would probably tell him, and he would phone right in.

Q. Do you know of any exception to that in the entire period of your experience, where a change has not been immediately relayed to your office by someone?

A. No, sir. That I have always found, that we get word right away. In fact, I can recall, in French & Company's time, they wouldn't wait until the office opened, they would telephone me at the house.

26084 Q. Well, now, in actual experience, in checking back these quotations which you pick up,—are you only interested in the so-called base mills, and what they are quoting, or are you concerned also with the prices quoted by the non-base mills?

A. Well, we are concerned with any delivered price that is quoted, whether it was quoted by a base-point mill, or any other mill. The thing we are interested in is the delivered price that is being quoted by our competitors.

Q. Can you tell, and, if you can, will you tell us how—whether or not a price that is quoted that you find is made by a base mill, or a non-base mill?

A. Well, from my experience I know that in general—any general change is a change in the base price at some mill, but there are a good many cases where mills have put in individual prices that are not directly related to any base. For want of a better word, we call them arbitraries.

26985 Q. What is your practice with your salesmen, after the sales department has calculated from these prices picked up, as you have described it,—what base prices are being used, as figuring points,—do you or do you not furnish your salesmen with lists of those base prices?

A. Oh, yes. The salesman is given certain figures to which he adds the freight to find what price he shall quote at destination to meet the prices of our competitors.

Q. And what use does the salesman make of those lists?

A. Of what?

Q. Of the lists of the bases.

A. The lists of the basing points?

Q. Is that the way—

A. He uses it as a figuring point to determine the delivered price that he will charge.

Q. You told us about the plant you are now with, the Hercules plant. Does it have a base price at its plant?

A. Not except in the sense that all Lehigh Valley mills are base mills.

Q. Well, as to that, there has been testimony about the so-called Lehigh Valley base. Do you ever have any foreknowledge of what the base is going to be at any particular time?

26986 A. No, sir; the base may be changed at any time without my knowledge.

Q. Do you ever know in advance what mills on any given transaction are going to be base mills?

A. I do not.

Q. Take the territories governed—are particular territories always governed by the same base mill?

A. No, not necessarily. The territory fluctuates depending on what the bases are at different mills.

The Lehigh Valley, for a very limited territory, is a base, but the fluctuations in other bases vary that.

Q. Did your company ever have any contact with its competitors to the extent that it would or would not establish or maintain any basing point at its mill?

A. We have never had any conversation with anybody about whether we were a basing point or not. I mean, in my experience. Ever since I have been in the business certain mills in the Lehigh Valley were basing points. I wouldn't discuss that with anybody, Mr. Leisure.

Q. What I want to get at, Mr. Brobston, is whether your being a non-base mill, or being a base mill, is the result of any—whether you are influenced in any way by any
26087 conversations or in any method, by dealing with your competitors?

The Witness: I can answer that, definitely, no.

By Mr. Leisure:

Q. As I understand it, then, you have had no agreements or understandings with any of your competitors as to whether you will or will not be a base mill. Have you ever had a base price with any of the mills that you have been connected?

A. Only in the sense I have always been connected with the Lehigh Valley mills. They are the general Lehigh Valley base.

Q. Or do you consider yourself, and are you, to the best of your knowledge and belief, entirely free to establish any price at your plant?

A. I certainly am.

Q. What has been your experience and observation if you establish a base at your mill, now; would there be any increase in volume of your business?

A. There might be a temporary increase if my base price was below the prevailing price. There might be a temporary increase in business which would be more than offset by the loss which I would get on my whole business
when my competitors met my price, which they
26088 would do immediately, from my experience.

Q. You say if they met your price. When your competitor raises his price so as to increase the base price, what is your practice? Do you follow the price rise?

A. I think in every case that I can recall we have followed the price rise. I have never known a price rise

made that wasn't warranted by increased costs and other reasons; and we have always followed them because we needed the money.

Q. Now, never having had a base at your mill, as you have testified, I take it from what you have said it has been your practice, then, to follow the prices that you found; is that correct?

A. That is correct.

Q. As far as this Hercules Company is concerned, was the destination pricing method and the use of basing points in effect when it started in to operate?

A. It was.

Q. I would like to call your attention at this time, Mr. Brobston, to a Commission's exhibit, "971-25-P." Are you familiar with the testimony referred to, Mr. Brobston?

A. Yes.

26092 Q. Mr. Brobston, in the 39 years of your experience in selling and manufacturing cement, have you ever known of any cement-producing area in which there has not been one or more basing points?

A. No, sir.

Q. How far is your mill from the nearest basing point within the Lehigh Valley?

A. Well, Mr. Leisure, I have already testified that we are considered part of the Lehigh Valley base,—Northampton, Pa., is about 10 miles from our mill, which is the
26093 technical base, you might say.

Q. Well, how far is Nazareth away from your mill?

A. Oh, Nazareth is about two miles.

Q. Are there any towns in between Stockerton and Northampton?

A. Well, there is Nazareth and Bath, two small towns.

Q. Is there any cement market in those towns?

A. Not for us, both those towns have mills inside their borough limits, and they buy all their cement from the plants within their borough limits, and they are taxpayers there.

Q. And what about Northampton?

A. Well, Northampton has the Lawrence Mill in it and has the Atlas Mill in it. I couldn't sell any cement at Northampton.

Q. Well, how many cement plants are there, then, be-

tween Hercules and Northampton, or, let me put it this way: What ones are between Hercules and Northampton?

A. I can answer the number. I think there is eight, as I recall it. That would not include the two at Northampton. I can name them, if you want me to: The Nazareth Mill; the National, the Lone Star, three mills of the Penn-Dixie, the Keystone—yes, the Keystone is the other side of Bath,—a plant of the Lehigh Company. Then, as I said, there are two plants right in Northampton.

Q. What is the total annual tonnage which you ship into that area?

26094 A. None at all.

Q. Did you tell us what the shipping point is for your mill?

A. The shipping point is Hercules, Pa.; that is in the borough limits of Stuckertown, Pa., and we get the mail at Nazareth, it is so close to Nazareth, and there are better mail facilities there.

Q. Well, what about Stuckerton, do you get any cement business there?

A. Yes, we get the business in Stuckerton the same way the other companies get the business in their boroughs. We get what business there is in Stuckertown.

Q. Now, when you quote a price to a customer in Stuckertown, how do you determine that price?

A. Oh, quote whatever price is quoted by our competitors.

Q. How long has it been your practice to determine your price in Stuckertown that way?

A. Ever since I have been with the Hercules plant.

Q. Well, when you sold Dexter cement in the town of Nazareth, how did you determine your price?

A. I met whatever price was being quoted by the other mills in Nazareth.

Q. Mr. Brobston, has the Cement Institute ever had anything to do with how you determine your price in the town where your mill is located?

A. Nothing whatever.

26095 Q. What do you do if the price changes in Stuckertown?

A. Well, I don't have much trouble there. The one dealer there brings me the quotations, and shows me the quotations, and I meet it. There is one dealer in Stuckertown takes, oh, maybe six or seven hundred barrels of

cement a year; if there is any change all he does is give us the quotation he gets, and we meet it.

Q. Is there any transportation charge involved in delivering cement to such a customer?

A. Yes, there is a switching charge.

Trial Examiner Norwood: Why doesn't that dealer conceal the competitors' price from you in the hopes of getting a lower one from you?

The Witness: Because the point is this, that we are within the limits of Stuckertown, and the Stuckertown people won't let him use any cement except ours, because we are taxpayers there, and he would very much prefer giving us the business if it don't cost him any more.

26096 Q. Has this dealer ever complained to you about your prices, Mr. Brobston?

A. No, it doesn't make any difference to him.

Q. I want to call your attention to Commission's exhibit here, 969-10-6. This exhibit reads:

"Hercules occasionally gets mill nets in cases of its base price on shipments to points adjacent to its mill where the freight rate from its mill is less than the rate from Northampton, Pa." I have been reading just there (indicating).

26097 (Witness examines document.)

Q. What is the total amount of cement that you sell at prices which yield you a mill net in excess of your price base?

A. Oh, six or seven hundred barrels a year.

Q. What is the percentage of that as to your total shipments?

A. Well, I could hardly figure that. I think about one-twentieth of one percent, something like that, Mr. Leisure.

26099 Q. Going to another subject, Mr. Brobston, is any of your business in the nature of repeat orders?

A. Oh, it is nearly all in the nature of repeat orders except when we are fortunate enough to get a new customer.

Q. And as to the dealers, do your dealers customarily do business with other cement producers?

A. Yes.

Q. Do you or do you not find that your customers generally are familiar with the market prices of cement?

A. All our customers are familiar with the market prices.

Q. Do you advise your customers at destination by any printed matter, or in any other periodic form, as to what your prices are?

A. We at times send out quotations.

Q. On such occasions, does your sales department discuss prices with customers?

A. With customers?

Q. Yes.

A. Oh, if it is a change in price, I should imagine they would.

Q. What has been your observation,—do you know of any method of effecting a price reduction without the information becoming generally known?

26100 A. I do not.

Q. Well, is it possible to make a secret price?

A. It is possible to make a secret price, but I have never found it possible to keep it secret.

Q. And why not?

A. A price that is made secretly to a dealer don't remain a secret very long. He tries to get the same price from his other manufacturers that furnish him with goods, and he may have a friend who is a salesman, he will tell him, so this friend, salesman in another company, can meet our price, and I have never known any secret rebates to remain secret.

Q. Well, now, in your long experience, what have you to say as to how that works out, if anything,—is it objectionable to make this method of price reduction? What have you to say as to that?

A. Well, to me it is very objectionable. That is not the way we do business, Mr. Leisure. I have always followed the policy of charging one price to all our customers, not to make any secret rebates to anybody.

Q. Has that been the policy of the three companies with which you have been connected?

A. Yes, sir; that certainly has.

Q. Do you consider that you have any advantage over any of your other competitors in the Lehigh Valley?

A. We have no advantage that I have ever been able to find.

26101 Q. Now, you have told us how your company meets the competitive prices at destination and gets those prices from the field, and so forth. Can you tell me of any occasion where you have ever had to quote a price at destination where you could find no previous quotation?

A. No, I know of no such case.

Q. Can you find a price where there is no—if there were no quotations?

A. We can always figure a price to the nearest destination. We take known mill bases and add the freight to the destination nearest the job. It may be that a contractor would want destinations quoted at two or three delivery points; then, if he told us, we would give him the prices wherever he wanted it.

Q. Now, take, again, your own experience,—take a case where your quotation is higher than your competitor's quotation. In such a case do you know whether your customer discusses that with your salesmen?

A. Oh, he unquestionably would tell the salesman right away that our price was too high.

Q. What price do you attempt to anticipate, then, at the destination, when you attempt to figure it as you have described?

A. We take a known base and add the freight to it to get the destination price.

Q. Well, if that is so, do you have any assurance 26102 that your price will be the lowest price quoted by any of your competitors?

A. No, we have no assurance at all. If we find that our price isn't as low as some of our competitors we either change it, have to lower it, or lose the business.

Q. And do you attempt to quote the lowest price quoted by your competitors?

A. We attempt to quote the lowest price that we think it is probable that our competitors will quote. Otherwise, we couldn't get the business.

Q. In ordinary practice do you need to make calculations with freight rates and price bases every time you figure a price?

A. No. The salesman gets to know the delivered prices in the town on which he calls regularly. It is not necessary for him to figure every sale.

Q. Now, taking up another subject matter: What is your practice, Mr. Brobston—I am speaking, now, of the Hercules Company—does it or does it not allow its customers an advance notice of price advances?

A. Yes, we give five days' notice of price advance.

Q. And how long have you observed that practice?

A. I think that was in when I came to the Hercules, Mr. Leisure.

Q. As to that, you have told us about the old
26103 Atlas Company and you have told us that when it lowered its price at any point in the sales territory, the Dexter had to meet it. In cases when you lowered your price to meet this price decline, to meet the new price of Atlas, when did you make your new price effective?

A. Well, the new price was made effective at once, but the reason for putting in the five days at the present time was to save us the trouble we used to have at those times. When we put in the new price at once, made it effective at once, we would have to allow for cars that had been shipped and were on the road, and even, in some cases, that had arrived at destination. If we had billed those cars at the higher price and the Atlas reduced their price, we had to place our customers in the position of the customers of Atlas who had bought cement at the new price, and, therefore, we had to allow on cars shipped, and it got very troublesome. People claimed they had cement in the warehouse, that they wanted an allowance on, and so I think, gradually, it became agreed on as five days at a point when our customers would be satisfied. The customers finally, I think, would feel that it was all right.

26104 Q. When we adjourned we were discussing, Mr. Brobston, the five-day waiting period, and you had said something about that coming to be about the right time, or some such phraseology.

A. Well, do you mean on an advance or on a decline, Mr. Leisure?

Q. We were discussing a period on an advance.

A. On an advance.

Q. Yes, sir.

A. We give five days' notice. That is, our new price on an advance does not go into effect until five days after the date of the notice of the advance.

Trial Examiner Norwood: Is that a general custom in the trade?

The Witness: Yes, sir.

By Mr. Leisure:

Q. Now, in cases of lowering of prices, when did you make your new price effective?

26105 A. In the case of a decline in price that, of course, goes into effect immediately, but we have to make allowances in case of a decline on cars that have been

shipped and billed at the old price, and which have not been delivered, are on the road when the decline went in.

In order to put those customers in position to meet customers shipped at the new lower price, we are and always have been in the habit of sending them credit memorandas bring the price on these cars which are on the road and not been delivered to their warehouse yet, down to the new price. We do that to protect ourselves because if they had cement at a higher price they couldn't sell it in competition with dealers of other companies.

Q. Is any period of time covered as to that? I think you said as to the others it had come to be considered about the right length of time. Has any period of time grown up, in your experience, as being the period of time?

A. In the old days it might be one day and then the dealers might claim the car was on the road, it might be eight days. There were no set figures in the old days.

Q. What about present time?

A. The one difference is that cars are delivered so much more quickly now that we very seldom have claims for a longer period than five days, so that five days we now allow—any man that asks us we give an allow-
26106 ance for the car, if the car has been shipped within five days of the date of that advance. That is generally felt by the dealers today, I think, to be fair.

Q. Have you explained fully, Mr. Brobston, your purpose in making the new price retroactive?

A. I thought so. As I say, it is mainly for the purpose of putting our customers in position to compete with the customers of the companies who have made a decline and whose customers have the cement at the new price.

Q. Well, as to that, is the five-day period an arbitrary period, or—

A. Well, of course, that is one of the details it would be pretty hard for me to answer. I think that Mr. MacBride sends credit to anybody he thinks really is entitled to it. I don't know that he gives credit to everybody who has had shipments within five days. They may have gotten the cement and sold most of it.

Q. These practices with regard to this period of time: How does that practice today compare with when you were with the Dexter Company during that period?

A. As I said, sometimes in the old days the Dexter allowed for six, seven, eight days, because deliveries were

slower and we had to protect our trade, keep them in position to compete.

Q. Do you recall any price change that occurred in your trade territory in 1938, in July of 1938?

26107 A. Yes, I recall that there was a change then.

Q. What part of your market was affected by those price changes?

A. Well, all the metropolitan markets of Boston, New York, Philadelphia were affected.

Q. When did you first learn of it, Mr. Brobston?

A. It would be hard for me to place the date. We learned of it the morning after the quotations were sent out, why, the company that sent out the new quotations.

Q. What did you do about it, if anything?

A. Why, we checked up at once to see whether it was a general advance. We found it was an advance in some places and a decline in other places.

We checked it to see whether we would have to follow it. When we found it was general and was being followed by other companies, we followed it ourselves.

26108 The witness identified Resp. Ex. 1087 as a communication he handed to Mr. MacBride, Hercules sales manager and vice president, when MacBride advised him of "this advance in price to which you have referred. He advised me of it and I felt that there were certain things I wanted him to do, and I wrote him this letter asking him to do them".

26112 By Mr. Leisure:

Q. Mr. Brobston, do you remember the circumstances under which you wrote this letter, Respondents' Exhibit 1087 (indicating)?

A. I do.

Q. What were they?

A. Mr. MacBride, our sales manager, told me that he had found quotations out that had been sent out by the Allentown Cement Company, which, in some cases, raised the prices in certain territory, and, in other cases, lowered the prices in certain territory.

It also appeared to mean that two new mill bases had been established. It appeared to mean that a mill base had been established at Evansville, and a mill base had been established at Valley Forge. The quotations showed that the price was materially reduced in Philadelphia, and

that vicinity, and around Reading, where those two mills were.

On the other hand, the prices which Allentown sent out were higher in the territory adjacent to Metropolitan New York, and were very much higher in Boston where the price had been extremely low.

26113 A. I called Mr. MacBride in and told him that his—as far as Metropolitan New York and Metropolitan Boston were concerned—that we wanted the salesmen to be very careful about taking any orders in that territory at the old price, particularly in Boston. The price had been so low that we were losing money on every order that we shipped there, and I did not want to take any more business there than we could avoid, any more than was necessary to protect our trade in our territory, and I so advised Mr. MacBride, because I was afraid that our salesmen in their desire to get business might take speculative contracts which would prevent our getting the benefit of the advance within any reasonable time.

26115 By Mr. Leisure:

Q. Now, you have told us what instructions you gave Mr. MacBride as represented by Respondents' Exhibit 1087; is that correct?

A. That is correct.

Q. I show you Respondents' Exhibit 1088-A and B, and ask you to tell us, if you know, what Mr. MacBride did as a result of your instruction in this instance?

26116 A. That afternoon Mr. MacBride came in to me and submitted to me a letter in which he had advised the salesmen as to what we wished them to do under the circumstances. Of course, on the afternoon of July 6th we were not sure that the companies would follow these moves, and that the advance would be effective, but in order to avoid any possible mistakes on the part of our salesmen he advised them that he wished them to be very careful. That in case the advance was effective that he wished them to be sure that they took no speculative contracts.

That due to the fact that we had had very unsatisfactory returns on our business in Boston and New York he wanted them to take as little business as possible at the old price, irrespective of any action taken by our com-

petitors, because he knew that the first thing the salesmen would do would be to come back and say that such
and such a company is taking it; we ought to take
26117 it. But his instructions were definite that we did not wish to take anything unless it was absolute legitimate business.

Q. Was this document, Respondents' Exhibit 1088-A and B, submitted to you before it was sent out to these two district managers?

A. Yes, sir.

Q. And do you know of your own knowledge that it was then sent out to them in the regular course of business?

A. Yes, sir.

26120 (RESP. EX. 1088-A and 1088-B was offered and received in evidence.)

By Mr. Leisure:

Q. Now, as to the subject matter, Mr. Brobston, that we have just been discussing, your company being a price follower. In case of a price change when you give less than a full five days' notice to the trade, what has been your experience, Mr. Brobston? Does that give full protection to your customers?

A. Yes, I should say that five days would give full protection to a customer. If our customer knows we are going to give him a period in which he can take orders at the old price, he is not stampeded to the company that has originally made the advance.

Q. If you do this, as the Trial Examiner suggested, for the protection of your customers, does it protect you?

A. The only way that I can protect myself is to
26121 protect my customers. If I didn't protect my customers I wouldn't have any.

Trial Examiner Norwood: He explained this community of interest between himself and his customers on that.

The Witness: Yes, I think that is correct.

By Mr. Leisure:

Q. Now, you told us this morning that on these price changes you gave us the term in which you usually heard about the change. In the event that you decide to follow how quickly do you get out your notices, ordinarily?

A. Just as quickly as we can. In most cases if we learned early in the morning, in most cases we can get

them out that afternoon, but it really doesn't make any difference because we tell our salesmen right away, and they communicate with our customers, and our customers know we have to follow a change in price or we won't get any business.

Q. You said, about the time that we were adjourning, that it had become the practice, more or less, this five-day period was the period of notice. Can you recall a time since you have been in the cement industry when this started to be the settled practice?

A. You mean when five days' notice of an advance was first given?

Q. Yes.

A. I wouldn't be able to say when that was first
26122 given. I don't know that date, Mr. Leisure.

Q. Well, if you can't tell us when it did, can you tell us what—you can't tell us what period it was that it started at all; is that right?

A. I can't say definitely when the five-day notice of advance went in; no, sir.

Q. How far back does it go, as far as your memory goes?

A. I can remember the time when we did not give notice of advance; we would simply send out notice of advance and while it was supposed to go into effect immediately we would usually find that the company that had made the advance had covered all the business in sight before they made the advance, so that if we had insisted on our advance to go into effect at once we wouldn't have any business for a long time to come, and I think that the five days grew out of that. The five days is to protect ourselves in our relations with our customers.

Q. Does it make any difference whether your customers are large or small?

A. No, we have never made any difference between large and small customers. A large customer in the old days would bring great pressure on us to give him a longer period at which he could get cement at the lower price, but we make no distinction today.

Q. You have told us that you have been con-
26123 nected with these various small companies and that they have been price followers. What has been your experience: Have they or have they not all, generally,

given a five days' notice to your customers in case of a price rise?

A. I don't remember doing it in the old days at the Dexter. As I told you, at the Dexter the price advance went in, supposed to be effective immediately, but it never was effective immediately due to the fact we had to meet competition of companies who had covered the business at the old price.

Q. In cases where you have followed a price rise, have you received the new or higher price on all shipments made after the five-day period was over?

A. No, sir. We always have a great many contracts at the lower price and we allow dealers to take all the cement that they want to take at the old price for 15 days after the price goes into effect. Any time during the five days dealers can place an order with us for any amount of cement they want to take into their yard for the next 15 days. As a result, we don't get the benefit of the results for a full month after the change goes in. We get some benefit but not the full benefit.

Q. Do you, today, have any provision in your contracts relating to your policy, in the event of a price decline?

A. Yes. In the event of a price decline our contracts provide that the contractor will receive the cement at the lower price.

26124 Q. Does that mean on all contracts you meet the market price if the market drops?

A. All contracts we have, we meet the market price on, if there is a decline.

Q. What about a rise, if the market price advances, does the contract price advance?

A. No, the contract is one-sided in that respect. The contractor is protected at the price of the contract no matter what the cement goes to.

Q. Has the practice been the same with the Hercules Company both as to rises and declines since you have been with it?

A. Ever since I have been there.

26125 Q. Now, I merely want to ask you if that condition—those two conditions—had obtained since you have been with the Hercules Company?

A. Yes.

Q. You understand that to be what I meant by my question?

A. Yes, those conditions were in effect when I went with the Hercules Cement Company.

Q. You say when you went with the Hercules Company. What about when you went with the Dexter Company in 1900,—did you make the reduction to contract customers in the event of a price decline?

A. Yes, that has been in effect for many years. The reason for that is, if we don't make the price decline the dealer goes and buys cement from somebody at the new price, and we just sit there with the cement.

Q. Did you follow that price in the years from, say, 1904 to 1926?

A. Yes, we had to.

Q. Well, prior to the time when you used this so-called decline clause in your contracts, did the Dexter Company give its customers the benefit of any market decline in prices then?

A. Yes, we had to, or we didn't get the business.

Q. As to when that went up,—in cases where the market prices went up when you were with the Dexter
26126 Company, did you ship your cement at the contract price?

A. We shipped all the cement that the contract called for at the contract price.

Q. Well, now, you say you are in charge of the
26127 general policies. What is the price policy of your company?

A. Our policy is to have one price to every customer in his own market. That is, we only have one price for any market.

Q. And with respect to competitors' prices, what is your policy?

A. We meet the prices that we have to meet in order to compete and get the business.

Q. What prices in your long experience do you have to meet in order to get any business?

A. We have to meet the lowest price that we find in any market in order to get the business.

Q. Is there anything of any kind which prevents you from selling at any price that you please,—either upward or downward?

A. Well, there is a price that prevents me from going up, because I can't sell cement. There is absolutely no reason under the sun that I couldn't bring the price down

Q. What I really have reference to—do you have any relationship with your competitors in a manner that would prevent you from doing that?

A. Absolutely not.

Q. Without checking with them in some way?

A. I am at perfect liberty to make any prices that I think it advisable.

26128 Q. You say that you endeavor to meet the lowest prices quoted by any of your competitors at a given destination. Why don't you endeavor to go below those prices, Mr. Brobston, in your experience?

A. The reason that I don't reduce my price is because I know, from my experience of 39 years, that if I make a lower price it would be met immediately by my competitors, and even if I attempted to make it, only in one or two cases, the whole level of the market would be 26129 reduced, and I would lose a great deal of money even if I gained a temporary advantage in shipments.

26132 Q. Mr. Brobston, over the 39 years that you have been engaged in selling cement, have you had occasion to observe the results when others would drop their price in cement?

26133 A. Yes, I have noticed the effect.

By Mr. Leisure:

Q. What has been your general experience in such cases? You have already told us that in order to sell cement it is necessary for the other competing manufacturers to immediately drop their price to the same level,—what about the volume of the manufacturer who first dropped his price,—what has been your observation,—did he have an opportunity of selling large amounts of cement at a lower price, or were the sales about the same except at a lower price?

Mr. Paulson: I object.

Trial Examiner Norwood: Do you remember any instances like that? Can you recall any instances like that?

The Witness: Why, there have been a great many instances, Your Honor, where there have been reductions in the price of cement. I never found that the company who made those reductions in price obtained any benefit from it whatsoever. If they reduced the price they might have gotten one particular contract, or they might have gotten

some business before the rest of us knew it, but, in
26134 the end, they go no more business, and the price of their market was reduced entirely.

As far as my own companies have been concerned, I am perfectly willing to say that I have never reduced the price. We think we make the best product that can possibly be made, and I feel I ought to get as much as it is possible to get; in other words, I think I ought to get the highest price at which cement can be sold in any market.

26136 By Mr. Leisure:

Q. Well, let me put it this way: Do you regard any of your competitors as a leader in raising or lowering market prices?

A. No, sir; advances and declines have been made by any number of different companies. I—I wouldn't know any one company.

Q. Has either The Cement Institute, or any other cement company, or its representatives, ever attempted to influence you in the matter of your prices?

A. Not in any way, shape, or form.

Q. In your 39 years of experience, has The Cement Institute ever had anything to do with fixing the prices of cement, as far as you know?

A. Not to my knowledge.

Q. Have you had any connection with it in any way?

A. Not in any way, shape, or form.

Q. Has The Cement Institute, during your entire period of experience, in any way participated in the com-
26137 petitive methods that were being used in the territory in which you sell cement?

A. Certainly not, to my knowledge.

Q. As to future prices that you might make, have you ever consulted any cement manufacturer, or its representatives, as to what prices you intended to make in the future?

A. I have not.

Q. And I would like to cover that in one general question: In carrying out your company's policies, have you ever been guided by the views of anybody outside of your own management with respect to prices?

A. No, sir; I have not been guided by the views of anybody, except that, of course, on general business con-

ditions I would be glad to get anybody's advice so that I can judge what is the proper policy.

(The foregoing testimony beginning with "Has either The Cement Institute" was adopted by Georgia, Giant, Oregon, Utah, Standard and Vulcanite.)

Q. You have said, I think, that your company had a one-price policy. What did you mean by that?

A. I mean by that that in any given market my price is the same to all customers.

Q. And how long has that been so?

A. That's always been true ever since I have been in the business; that is what I believe in.

Q. You say that is what you believe in; why?

A. Because I think it is the best policy for the company, because if you are not fair—I think it is the only fair policy—and if my company is not fair, in the
26138 end we won't get the business.

Q. And has it or has it not been your experience that that policy is the fairest policy to your customers?

A. I believe so, and I believe my customers think so.

26139 By Mr. Leisure:

Q. Mr. Brobston, do you ship cement today only in carload lots?

A. Yes.

Q. Has that been regularly the practice? Did you change that from another custom? Did you ship to customers taking less than carload lots at any time?

A. In the early days at the Dexter we may have made a few isolated shipments in less-than-carload lots, but, as a general rule, all shipments of cement have been in carload lots.

Q. Do you know the reason for that, Mr. Brobston?

A. Well, the main reason is that the freight rate on less-than-carload lots is so much higher than the carload rate that we would object very much to shipping it
26140 unless it were in carload lots.

Q. Well, you say you object. Does the cost,—does it cost you any more per barrel to load one carload than it does to load more than one carload?

A. It costs us no more per carload to load one carload than it costs per car to load fifty carloads, Mr. Leisure.

Q. I think you have already told us that at the present time you do not give any quantity discount; is that correct?

A. That is correct.

Q. Now, you said that your price was a one-price policy applied to your customers in a given market. What did you mean when you used the word "market" in that sense?

A. I mean at the place where the cement is delivered to the person who is going to use it or sell it.

Q. Is there, then, a market at your mill, in your experience?

A. There is not.

26142 Q. I think you told us, Mr. Brobston, that it was your policy and it was the policy of the Hercules Cement Company, to market all of its cement at delivered prices.

A. That is correct.

Q. What are your reasons for having that policy, Mr. Brobston?

A. Because that is where the market is, Mr. Leisure.

Q. Do you, as a matter of policy,—do you or do you not attempt to give any consideration to the good will of your dealers?

A. The good will of our dealers is one of the
26143 main assets of our business, Mr. Leisure.

Q. Now, do you sell any cement to the railroads?

A. Yes, we sell cement to the railroads.

Q. On what basis do you sell to them?

A. We sell to them either at a delivered price or a delivered price on their rails.

Q. How do you sell railroads which have no sidings at your plant?

A. If it is a railroad that has no cement plant on its line we sell them delivered to some particular station on that line. The rail companies that are comparatively close to you, we sell delivered to their tracks.

For instance, we sell delivered to the Pennsylvania at Martins Creek.

26144 Q. Now, you say you sell a substantial part of your cement on specific job contracts. What was your experience and your observation as to how the practice of making specific job contracts grew up?

26148 The Witness: That would go back to the very start of the Dexter Cement Company, Mr. Leisure.

By Mr. Leisure:

Q. Do you recall any time in your 39 years—see if we can save some time: Do you recall a time in your 39 years when you did not follow that practice?

A. Yes, in the early years at the Dexter Company, and it was due to the experience that I had at that time that I am so very strongly in favor of specific job contracts.

I can give you the illustration of that from the experience we had when the Dexter Cement Company was started. The price of cement in the year that the Dexter Cement Company first started to sell cement was 95 cents a barrel, and we sold our product at that price through French & Company almost exclusively to distributors.

When it got to the year 1902, French & Company,
26149 in the early part of 1902, made contracts with these distributors for just so much cement, without any specific obligation on their part at all. The price of cement in 1902 went up to $2 a barrel, and we had to furnish to these distributors the cement at the price at which we had sold it to French & Company, and they got the benefit of the increase in price.

In the early part of 1903 French & Company sold all our output at $2 a barrel to these same distributors. In the spring of that year the price went back to 95 cents a barrel, and these distributors didn't take a barrel of it. We had to sell it all over again, the excuse being given by French was that they couldn't sell, that the price of other companies was below, and the dealers and contractors would not take it at the price at which we had sold it. The result was we had to furnish all our cement to these distributors when the market was up, and when the market went down they didn't take any of it, and from that time I have been a very strong believer in making only specific job con; contracts where I knew the amount would be taken, and when it would be taken.

Q. Now, you say you have been a believer. What has been your actual practice since 1903 with regard to that,—have you required that a specific job contract be entered into when you were selling cement for future requirements?

26150 A. We started right then and there to try and get it in every case, and as the years went on we have come to the point where we will only sell on what we believe to be a legitimate specific job contract for the amount that the job will actually take.

Q. You say you try. On these contracts for future delivery, is there any uncertainty from your standpoint today?

A. Yes, even though you have a specific job contract you don't always get it. The dealer may try to cover with more than one company, or he may cover for more than the job will take. We do our best to prevent that, but we cannot always do it—a company of our size cannot investigate thoroughly every single contract, and we often find this argument as to whether we have all of a contract or whether the contract takes the amount that the dealer wants to take from us.

Q. Does the going up or down of the price affect those specific job contracts?

A. Yes. Of course, that's why we put in the provision in the contract that in the case of a decline we would lower cost of the contract so we would get it—even if it did go down.

Q. How about when it goes up?

Trial Examiner Norwood: How does that protect you, then, as long as you have to give a guarantee against decline,—how is that contract any advantage to you?

The Witness: Why, we have the business, Your Honor.

Trial Examiner Norwood: Yes.

26151 By Mr. Leisure:

Q. That is when you have a decline?

A. Yes.

Q. Well, what happens when the price goes up, Mr. Brobston?

A. Well, we have to furnish the amount really called for by the job, but very frequently the dealer will try to get more than is actually used on that job, and if he is at the low price he sells it from his yard. We have to watch that as closely as we can.

26152 Q. Now, taking up another subject: You said that your company did not quote the Federal Government on proposals when they did not specify the approximate amount of cement which you might be required to furnish. Did you or did you not make known to the Federal

26153 Government your reason for declining to quote on such proposals?

A. I did; on one occasion.

Q. Specifically, did you explain your reason for declin-

ing to quote on the Government's invitation of May 5, 1938, as well as the invitation issued on March 30, 1938?

A. I don't remember the dates. It was in 1938, Mr. Leisure, that I wrote the letter to the Procurement Division.

Q. Does Respondents' Exhibit 1090-A and B refresh your recollection as to that; as to whether those were the dates (handing documents to witness)?

A. Yes, I remember this letter.

Q. How did you regard those proposals which I have referred to in so far as your selling policies were concerned?

A. As I recall it, I wrote a shorter letter at the time of the first proposal objecting to the form.

Q. You say the first proposal. Do you have ref-
26154 erence to Commission's Exhibits 1340 and 1339 (handing documents to the witness)?

A. Yes, these appear to be the ones.

Q. Under what circumstances did you write that letter, Mr. Brobston?

A. Which are you referring to, this letter (indicating Respondents' Exhibit 1090-A and B)?

Q. Yes.

A. I didn't write this letter. Mr. MacBride wrote this letter.

Q. Were you familiar with the transaction at the time?

A. Fully.

Q. Can you explain the circumstances of that transaction?

A. Yes. There had been a request for a quotation made earlier. I think it was probably before Mr. MacBride just before Mr. MacBride came with us, and when it was brought in to me I felt that we couldn't quote on the basis they asked for, and wrote a letter to the Procurement Division so stating. They they asked for a second bid, after Mr. MacBride had come with us.

Mr. MacBride came in. We talked the matter over fully. He pointed out the objections and I asked him to write a letter covering it and send it in.

Q. And is this a copy of that letter (referring to Respondents' Exhibit 1090-A and B)?

26155 A. This is a copy of that letter.

Q. And it was sent in, was it?

A. It was.

26157 Q. What happened, and why did you and Mr. MacBride decide not to bid—and this is the second
26158 exhibit, Commission's Exhibit 1399, if you need to refer to those to refresh your recollection (handing documents to witness).

A. Well, as far as the reasons given in this letter are concerned, they were no more Mr. MacBride's reasons than mine.

Trial Examiner Norwood: Just give us your reasons.

By Mr. Leisure:

Q. Refresh your recollection from those documents and tell us why you didn't bid, please.

A. In the first place I felt that the conditions which we were asked to fulfill were contrary to our general business principles and were not good business. It was really an option to buy an unspecified amount of cement. While it specified 5,500 barrels, there were conditions in the contract that made it absolutely nothing but an option and the Government didn't have to take one barrel if they didn't so see fit.

There was another objection which I was not as familiar with as Mr. MacBride. The ones I have just mentioned I was familiar with.

They were really manufacturing and other problems that I was familiar with, but Mr. MacBride also outlined to me the fact that there were certain—

Q. Just tell us what your objections were, at the moment, will you?

A. Well, the one thing, when Mr. MacBride ex-
26159 plained it to me, I did object to it then.

Trial Examiner Norwood: Tell us what was the basis of the objection.

The Witness: The basis of the objection was at that time there were certain arbitrary prices in the State of New Jersey, and if any base price at the mill had been made it wouldn't have put us in line to get business in certain places. Those were the reasons.

—We went on to state in this letter—

Trial Examiner Norwood: Don't tell what the letter said.

The Witness: Well, what we felt should be done—

Trial Examiner Norwood: Yes.

The Witness: What we felt should be done was that we

should be given a definite quantity on which to bid and have delivery at a definite point so that we would know definitely whether we had the business or didn't have the business, and our feeling being the way that bid was asked, we wouldn't get one barrel of cement, even if it were awarded to us.

By Mr. Leisure:

Q. Were you able to meet the conditions according to time?

26160 A. This contract calls for 5,500 barrels to be delivered during the month of June, 1938.

The proposals were to be opened on May 18, 1938. At that time we had no Government contract and no cement under test which had been accepted by the Government.

The Government will not take a sample unless we have a contract. If we had gotten this contract on May 18th, and they had asked for delivery on June 1, we couldn't possibly have furnished it because we would not have the results of the 28-day test which the Government insists on before they will accept the cement.

Do you want me to go on with the other objections on this contract?

Trial Examiner Norwood: Yes.

By Mr. Leisure:

Q. Is the work specified in the invitation?

A. It specifies 5,500 barrels of cement. It goes on to say in paragraph 15, on page 8, it says: "The Government reserves the right to increase or decrease the quantity specified but not to exceed 15 percent."

26161 That would indicate that it was a definite contract for 5,500 barrels plus 15 percent over or under, but if you go down below to paragraph 17, paragraph (c), it says: "It is estimated that the first delivery of cement will be required on board cars at the shipping point, about June 1, 1938, and that deliveries will extend from that date over a period of one month. The estimated requirements for cement are as given in the schedule, but due to uncertainties as to the progress of the construction work this schedule cannot be guaranteed, and the Government reserves the right to increase or decrease this schedule as may be necessary to meet the requirements of the work."

Now, we figured from that that they might not start the work at all, and we wouldn't get anything.

By Mr. Leisure:

Q. Did you also receive an invitation represented by Commission's Exhibit 1392, Mr. Brobston (handing document to witness)?

A. Yes, I believe we did.

Q. Did you submit any bid on that invitation?

A. No, they asked us for quotations.

Q. Why not?

A. How?

Q. Why not?

A. It asked for quotations in Ohio and West Virginia. We have not shipped any cement in either of those
26162 States for a long while, and were not in competition there.

Q. Now, you have told us that you consulted with your Mr. MacBride, and wrote this letter, and gave the Government the benefit of your combined judgment as to why you would not bid. I am referring to Respondents' Exhibit 1090-A and B (indicating).

Did you confer with any other manufacturers prior to that time, or does this letter, Respondents' Exhibit 1090-A and B in any way reflect any contact that you had with any competitors with respect to why you did not bid?

A. It did not. We had no contact with any competitors in regard to the bid.

Q. I show you Respondents' Exhibit 1091, for identification, Mr. Brobston (indicating); and in connection with that I would like to ask you whether or not the Government is an important factor in your sale of cement?

A. The Government is not an important factor in any way; it is one of our very small customers.

The witness identified Resp. Ex. 1091 as a statement of Hercules' total sales in each year from 1927 to 1938, inclusive, showing the number of barrels shipped to the Government each year and the percentage these shipments represented of Hercules' total sales. The exhibit was made at his request and he can vouch for its correctness and accuracy.

26163 *Examination on Voir Dire by Mr. Wooden.*

Q. Was this made up for your use in this case, Mr. Brobston?

A. I was asked to have it made up; yes, sir.

Q. For production here?

A. Yes.

(RESP. EX. 1091 was offered and received in evidence.)

By Mr. Leisure:

26164 Q. Taking up for a moment the subject of the freight rate books, Mr. Brobston: Does the Hercules Company use the freight rate books of the Institute?

A. They do.

Q. In what manner?

A. They use it to determine what the freight rate is to destination,—any destination where they are quoting prices.

Q. What is the purpose of using the freight rate book?

A. It is a great convenience, it saves us time and trouble, and is a quick and accurate method of knowing what the freight rate is, so that we can figure out price to destination.

Q. Do the Hercules Company salesmen carry this freight rate book furnished by the Institute?

A. They do.

Q. Do you know what use they make of it?

A. They use it as I have told you, to figure their freights to destination, so that they will know what price we expect them to quote at destination.

Q. Well, you say "quote at destination." Are your salesmen provided with lists of destination prices?

A. No.

Q. Prior to your coming with the Hercules Company, did the Dexter Company maintain any traffic department?

A. No, the Dexter Company had no traffic department; it was a very small company, comparatively, and it
26165 would have been very expensive to maintain any regular traffic department.

Q. Well, what did you do for freight rate information?

A. Do you mean from the earliest days?

Q. Well, I was thinking more particularly during the years when French & Company were sole sales agents for the Dexter Company.

A. Yes.

Q. I think you said 1900 to 1915.

A. Well, in the very earliest years French & Company would send us an order and would specify what the freight rate was, and we would check it with the railroad tariffs.

Q. Do you know where French & Company obtained the freight rate information?

A. As far as I know, they got that from freight tariffs.

Q. Did you have any control over French & Company, such as you would have over your own sales department?

A. No, that was the objection to having a general sales agent; we did not have the control that way that we felt we should have of our own salesmen.

Q. You say that was the objection. Did you have any arrangement with them as to regarding freight?

A. Yes. It was specified in the contract that we had with French & Company that the price we made them should be low enough to meet the destination price being made by the Atlas Cement Company.

26166 Q. My next question was: What was the purpose of that? Why did you do it?

A. At the time that the Dexter Cement Company was started there were a number of points to which the rates from the Atlas Cement Mill were lower than the

26167 rates from Nazareth, Pa., and, to protect himself, French & Company had a provision in the contract which stated that where the rate of freight from Nazareth to destination was higher than the rate from the Atlas Cement Mill, that we, the Dexter Company, would have to absorb the difference.

26168 Q. You have told us, Mr. Brobston, about new mills from time to time. When these new mills were set up did you attempt to find out what the rates were from the new mills?

A. We did, that was necessary for us to find that out in order to meet their competition at the points where they had a lower rate than we did.

Q. And could that be done? Could you determine those? Could you find out what those rates were?

26169 A. It could be done by getting the railroad tariffs, but it was very burdensome, and we didn't—and we were not always sure that we had the right figures.

Q. Take today, is there any difference between the use your salesmen make of the freight rate books today and the use you made of the freight rate tariffs when you were with the Dexter Company, for instance?

A. No difference at all. The freight rate books are in much more convenient form, and give us very much less difficulty in finding out the correct rates.

Q. And from those tariffs, when you used those, were you able to determine what your competitors were quoting at destination?

A. Well, we had to get the information as to what they were quoting at destination the same way we do now.

Q. Yes.

A. For finding out what competitive figures were, we could take the freight rate and figure back to find out what they were charging at their mill.

Q. Yes. As I understand you, that could be done either now, where your men used the freight rate book, or in the former period when you used the tariffs with the Dexter Company.

A. That is correct.

Q. Now, you have told us that you have always been connected with, comparatively speaking, small companies, that is, that they were not large companies?

26170 A. That is correct. The companies with which I have been connected are all one-mill plants, and all located in the Lehigh Valley.

Q. I would like to ask you with respect to that, Mr. Brobston. Do you know of any occasion wher any of the so-called big companies have ever tried to coerce you or influence your action in any way?

A. No, sir. I know of no case where any large company has tried to dictate or coerce me in any way, shape, or form.

Q. Now, if a big company puts in some competition in your territory, did you meet it?

A. We did. We met any competition we found at point of delivery.

Q. I want to call your attention to Commission's Exhibit 2849 (indicating), being a freight rate book for New York and New Jersey.

(Witness examines exhibit.)

Q. Did you use the freight rate books of the Nazareth Traffic Bureau?

A. We did.

Q. Why? For what purpose?

A. For the same purpose exactly as we use the Institute books today, to—

Q. To whom did the Nazareth Traffic Bureau furnish freight rate books?

26172 A. Originally the Nazareth Traffic Bureau was formed to furnish rates to the companies in the Nazareth district. I knew that the larger companies had these freight rate books. French & Company had called my attention to that fact, and wanted to know whether we couldn't have something of that kind.

Q. What do you mean by the Nazareth group?

A. The Nazareth group consisted at that time of the one-mill plants in and around Nazareth; there was the Dexter Company with which I was connected, the Nazareth Company, the Penn-Allen Company—

Q. Well, without going into those.

A. (Resuming) —the Penn—

Q. Without going into all of those—were all of those mills in the Lehigh Valley?

A. They were all in the immediate vicinity of Nazareth.

Trial Examiner Norwood: That is in the Lehigh Valley?

The Witness: That is in the—this is called the Nazareth Traffic Bureau.

Trial Examiner Norwood: Was that in the Lehigh Valley?

The Witness: Yes, sir.

By Mr. Leisure:

Q. Did those mills have the same freight rates to points outside the Valley, or did they have different
26172 freight rates?

A. They had the same rates as the other companies that were in the Lehigh Valley.

Q. Is that still true today, Mr. Brobston?

A. That is still true today.

Q. Now, at the time that this Nazareth Traffic Bureau was functioning, were there any publications of that character issued by other cement companies?

A. Oh, yes, the Alpha Company had their books; the Lehigh Company had their books, and, I think, the Atlas had a book.

Q. Does the information contained in the freight rate books furnished by The Cement Institute compare with the information in the freight rate books of your Nazareth Traffic Bureau, in your experience?

A. Practically the same thing.

Q. Can you point to any difference in the book that you now have there before you?

A. The only difference I can see between these books and the books today is that there are some points from which cement is shipped in today's books, more points shown than there were in this book. That is the only difference that I notice.

Q. How long did the Dexter Company continue to use the freight-rate service furnished by the Nazareth Traffic Bureau; do you know?

A. That I wouldn't remember, Mr. Leisure.

26173 Q. Have you ever had any understanding between yourself and your competitors regarding the use of these Institute freight rate books as to how you would or would not use them?

A. We had not; we use them as a matter of great convenience to us.

Q. You say "great convenience." Could you quote prices in the same manner as you do today without use of the Institute freight rate book?

A. We could, unquestionably, from the tariffs, but that would involve our starting our elaborate traffic department which would be a very heavy expense for a company of our size.

Q. Let me sum it up in this way: Is there any difference between your method of quoting prices as used by your company today and the method used of quoting, say, in 1915?

A. No.

Q. You mentioned it would be somewhat of a hardship without the Institute book. Have you given any consideration at any time as to the matter of preparing freight rate compilations of your own, in your own company?

A. Well, as I just said, it would cost us so much more than it costs us today that I have felt as long as I could get that information without establishing an independent traffic bureau I would be very glad to do it.

And another thing: These rates are checked, and I would feel very much safer as to the proper freight rate if
26174 I had books that were thoroughly checked rather than just using a traffic bureau of my own.

Q. Have you ever quoted the Federal Government on any requirement where land-grant freight rates were involved, Mr. Brobston?

A. No; none of the companies with which I have ever been connected have had anything to do with land-grant rates.

Q. In your entire experience in selling cement—I mean, now, covering the entire period of your activity in that regard—have you ever deprived the Federal Government any benefit of land-grant rates?

A. I have never had a chance to deprive them of any land-grant development because there have never been any land-grant rates in the mills with which I have been connected.

Q. I take it as to this charge in the complaint that all the Respondents use a control clause whereby the route is arbitrarily selected and the land-grant rate approximated; from what you have said I take it your company has never used the control clause at all.

A. I guess I will have to admit I never heard of the control clause until this case was started, and I don't believe I know what it is today.

(The foregoing testimony beginning with "Have you ever quoted The Federal Government" was adopted by Giant, Standard and Vulcanite.)

26175 Washington, D. C.
November 1, 1939.

26176 JOSEPH BROBST thereupon resumed the stand and testified further as follows:

Direct Examination (Continued).

Mr. Leisure: I ask to have marked for identification a freight rate book of the Nazareth Bureau, dated effective July 1, 1927, covering Pennsylvania, consisting of 88 pages.

26177

(The book referred to was marked for identification "Respondents' Exhibit 1092.")

Mr. Leisure: I also wish to have marked for identification a second freight rate book of that Bureau, dated effective July 1, 1927, covering Maryland, Delaware, Virginia, West Virginia, and the District of Columbia, consisting of 59 pages.

(The book referred to was marked for identification "Respondents' Exhibit 1093.")

By Mr. Leisure:

Q. Mr. Brobston, when we adjourned yesterday we had been discussing the freight rate book of the Nazareth Bureau, and you had been explaining to us what use you made of them with reference to Commission's Exhibit 2849, that exhibit being one of the Nazareth Bureau freight rate books covering New York and New Jersey, effective July 1, 1927.

I now show you Respondents' Exhibits 1092 and 1093, for identification, and ask you whether these books complete the set of Commission's Exhibit 2849 (handing documents to the witness); whether or not you also used these books?

A. We used these books but they don't complete the set. There were freight rate books from New England as well as these three.

26178 Q. Well, as far as they go, do they?

A. Yes; as far as they go.

Trial Examiner Norwood: When did you use those?

The Witness: The date on those particular books is July 1, 1927, Your Honor. I suppose we used them from then on.

26179 (RESP. EXS. 1092 and 1093 were offered and received in evidence.)

Q. I would like to take up now, Mr. Brobston, the subject of trucking.

First, I want to show you a Commission's exhibit, being 971-9-A. This Commission's exhibit purports to be signed by Mr. Charles H. Noble, Jr. I notice there is a "J.B." on the lefthand corner (indicating). Can you tell me who that has reference to?

A. (Witness examines document.)

Q. Perhaps you can save time if you will just tell us what the letter is, Mr. Brobston.

26180 A. All right. Why, the letter is a letter to Dr. Arthur R. Burns, sent from our company. You asked me about the initials on it. While the letter was signed by Mr. Noble, I dictated that letter, but it was signed by Mr. Noble because Dr. Burns' letter was addressed to him.

Q. What were the circumstances under which you dictated this letter?

A. Mr. Noble brought the letter to me and asked me

what he should say in reply to it, and I just dictated the letter in the ordinary course of business.

Q. Had Professor Burns asked you for any information?

A. Oh, yes, this was sent in reply to a letter from Dr. Burns; it says here "Replying to your letter of the 17th instant."

Q. What kind of information was Professor Burns asking you about?

A. He was asking for information as to what I knew about trucking in the cement industry.

Q. Well, now, I notice in this exhibit you describe certain difficulties which you had experienced with your dealers as a result of truck deliveries. Were you describing in that letter your actual experiences as of the time with your dealers?—

A. Yes, it was a description—

Q. —in the trucking?

26181 A. A description of the natural experience I had had.

Q. I notice you have a hypothetical situation there described as Towns A and B. Was that hypothetical, or did that represent an actual experience?

A. It represented an actual experience I had had at the Dexter Mill.

Q. What did you have reference to as to that experience?

A. As I testified to yesterday, I think, for a certain territory contiguous to the mill we sold direct instead of through French & Company, and I had gotten a dealer in Easton who handled our cement, and a dealer in Bethlehem who handled our cement. Both these cities were within trucking distance, but I found that the dealer in Bethlehem was trucking cement over to Easton, which annoyed our Easton dealers very much indeed. In fact, eventually, my recollection is, that eventually we lost the Easton dealer.

Q. When did that experience occur?

A. Oh, I wouldn't be able to give you the exact date. I should say it was some time shortly after 1905.

Q. Were those deliveries also made for your sales agents, French & Company, as you have described?

A. I don't remember any trucking deliveries for French & Company.

Q. You have explained in that letter your experience with trucking with respect to your dealers; did that
26182 experience have any influence on your attitude toward trucking?

A. Yes, I have been very much prejudiced against trucking ever since.

Q. Where were your largest markets for cement at that time?

A. The same as today, the metropolitan district in New York, Boston, Philadelphia; principally, of course, New York is the largest market.

Q. You said that you ship cement by truck for a distance of ten to fifteen miles from the mill. Was truck delivery available to New York or Boston?

A. Not to my knowledge. I have never heard of cement being trucked to either place.

Q. During this time that you did truck, the time that trucking went on at the Dexter Mill, what did your truck sales amount to?

A. Oh, they were very small, indeed. I should say much less than one-half of one percent.

Q. What did you find as to the cost of delivering those truck sales in comparison with the cost of handling your regular carload basis?

26183 A. The cost was slightly higher, but it was mainly the inconvenience. The mill wasn't equipped for delivering trucked cement; it was equipped for loading it on cars, and in loading it on trucks it was very inconvenient and we had to pay the men extra time for doing it.

Q. Since you have been with the Hercules Cement Company have you had any request for truck delivery?

A. Not to my knowledge; no, sir.

Q. Have you ever discussed the subject of truck-
26184 ing with any of your competitors?

A. I guess I certainly must have. I discuss everything in connection with the business, as I meet them.

Q. What I mean is, have you ever come to any kind of understanding with them?

A. No, sir; none whatever.

Q. Any contact which influenced your action in any way with respect to your own trucking? Have you ever had any agreement of any kind, or any kind of contact which influenced the attitude of your own company with respect to trucking?

A. I may have talked occasionally to other cement men about the question of trucking, but I certainly never had any agreement in any way, shape, or form with any of them in regard to it.

The witness identified Resp. Ex. 1094 as a calculation made up at his request by Hercules' auditors containing the total number of barrels that had been trucked by the Hercules Trucking Corporation from 1925 to 1929,
26185 inclusive, as compared to Hercules' total shipments in that time. He personally talked to the auditor about it who assured him, personally, that it is correct.

Examination on Voir Dire by Mr. Wooden.

Q. I understand this was prepared for use in this case, Mr. Brobston?

A. Yes. At least I presume so. I was asked to prepare it.

Q. And you had your auditor do all the work; looking up the record, and you had nothing to do with making it up?

A. Not making it up, personally.

Q. You told the auditor what you wanted and he gave you this.

A. Yes, sir.

Q. Were the years covered by these figures, ending in 1929, indicated to you?

A. How do you—

Q. Did somebody ask you to prepare them for these particular years,—the figures for these particular years?

26186 A. Well, those are the only years that the Hercules Trucking Company operated; that is all the years that this company operated, Mr. Wooden.

Q. It is not all the years that the Hercules Company loaded or made deliveries to trucks at the mill, is it?

A. As far as I know—they bought the trucks in 1925, and when they got through with them they put them in the quarry in 1929. Those are all the shipments that were made through the Hercules Trucking Company, and, as far as I know, they never owned any trucks of their own.

Q. But the question I am asking you is, Hercules Com-

pany delivered to trucks, other peoples' trucks, at the mill later than 1929, didn't they?

A. Not to my knowledge. There is no record.

Q. Well, what do you know about it?

A. Well, I mean, there are no records of any trucking in the Hercules Company beyond that year.

Trial Examiner Norwood: Received as marked.

(RESP. EX. 1094 was offered and received in evidence.)

26191 By Mr. Leisure:

Q. Now, let us take up the question of water shipments, Mr. Brobston, with respect to the mill of which you are now head. Is your mill situation—or is it so situated that water transportation is available as a method of distributing of cement?

A. It is not.

Q. Has the Hercules Company ever employed water transportation in distributing its cement?

A. Not to my knowledge. I don't see how they could.

Q. You don't know of any occasions where there was any opportunity to use water, as far as your company is concerned?

A. No, no opportunity at all. They are not situated so that they can use water transportation.

Q. Have you ever shipped any clinker by water?

A. No, sir.

Q. In the long experience that you have had in the manufacture and distribution of cement, do you today know of anything cheaper than rail transportation by which you can distribute your product?

A. I do not.

Q. Now, taking up the subject of imported cement. Does your company come into competition with imported cement, Mr. Brobston?

A. We do.

Q. Where do you meet it?

26192 A. All along the Atlantic Seaboard, mainly in New York and Boston.

Q. Just how do you come in contact with it? How does it affect you?

A. Well, they are directly in competition with us in both of those cities, and we lose business to them.

Q. What part of your total sales area is affected by foreign competition? In what part do you come in contact with it?

A. Well, that is pretty hard to say. I should say that that area in which foreign cement affects the price somewhat would be almost 50 percent of our sales. I can't give you any definite figures on that, Mr. Leisure.

Q. Have you, in your experience, ever been able to meet the price of imported cement?

A. How far back do you except me to go, Mr. Leisure?

Q. I was thinking particularly of the Dexter and Hercules companies.

A. No. We have never met the price, since I have been with the Hercules Company.

Q. Why not?

A. What did you say?

Q. Why not?

A. Why not? Because it would be so low it would be very unprofitable business, if we met the price that they charge in either New York or Boston.

26193 Q. Now, you say it is lower in these depressed areas. What have you found when you quote, for instance, a lower price in one area? Do your customers, or do they not, in other areas, expect the same and similar concessions?

A. It affects a very wide area. If we make a lower price in Boston, for instance, or New York, it affects a very large area outside of these towns.

Q. Have you ever considered abandoning these markets where you have depressed prices, because of foreign cement?

A. No, sir; we couldn't afford to abandon markets like New York and Boston.

Q. Why not?

A. They are our main market. If we abandoned them we wouldn't have any market. It is absolutely necessary for us to keep in those markets.

For instance, in the Boston market, we kept in the Boston market when our net return was very unsatisfactory, but we were in hopes that the price would come up, and we couldn't afford to abandon that market or we would have been out a large part of that trade.

Q. Have you ever considered abandoning them temporarily when these depressed prices existed?

A. No. If you abandon a market temporarily it is almost impossible to get back.

Q. Are there any new markets which you could
26194 develop today, Mr. Brobston?

A. Unfortunately, for the Lehigh Valley, there are no new markets that we can reach on account of the difference in the freight rates and the new mills that have been established.

Q. How long have your present markets existed?

A. Ever since there has been a Lehigh Valley they have been the metropolitan areas nearest to it.

Q. If you should drop out of New York, these markets that we have been talking about where you sell, have you any other outlet for your business where you could dispose of it?

A. No other outlet at all, that I know of.

Q. When you came with the Dexter Company did you meet any competition from imported cement at that time?

A. Yes. There was considerable imported cement coming into the country at that time. That is why I asked you the question as to what time you meant, because at that time the foreign cements were getting at least as high or a higher price than the American cement.

Q. Well, was the foreign product then considered as good as domestic cement, at that time?

A. When I came into the business there were a great many architects and engineers who still considered for-
eign cement, like Dykerhof's and Alsen's, for in-
26195 stance, were well established foreign brands. The quality of both those brands was very good, and back in those days, 1900, I can't claim that the quality of American cements were anything to brag about. None of it was particularly good, and some of it was pretty bad. That was back in 1900, when I came in. I know that, because Frer h & Company handled Dykerhof's and Alsen's.

Q. I wonder if we could get that time fixed a little in your memory. Did imported cement command a premium over your brand, say, from 1901 to 1905?

A. Well, I should say from 1900, when I came into the business, until 1904 or 1905 that foreign cements, in many cases, demanded a premium.

Q. Now, the record shows that a uniform specification for Portland cement was adopted as early as 1904. Did that have any effect on the quality of domestic cement as compared with foreign cement, do you know?

A. Yes. After those specifications were adopted the quality of domestic cements increased very rapidly, and it soon came to the attention of engineers and architects that the cement was better, and they gradually appreciated the fact that American cements were fully up to the standards of foreign cements, and they were not willing to pay a premium for foreign cements, after that; the American cements replaced them.

Q. Did the Dexter Company ever demand any premium over domestic cements from 1900 to 1904?

26196 A. Well, Mr. French had a sales manager by the name of C. Webber Jones. I have heard him say Dexter cement was worth 25 cents a barrel more than any other cement, but I have never known him to get it.

Q. Did he ever get a penny more?

A. No, he never got even a penny more.

Q. The compiaint in this case charges that you and others have made "concerted deviations from prices which would normally prevail at seaboard centers."

I want to ask you, has the Hercules Company had any kind of an agreement or understanding with any other Respondent in this case concerning the prices which it has quoted in the so-called port areas?

A. None whatever.

(The foregoing testimony beginning with "The complaint in this case charges" was adopted by Georgia, Oregon, Giant and Vulcanite.)

26197 Q. Well, quite aside from your exhibit, what is your general policy? Is it or is it not your policy to meet arbitrary prices when you find them in the territory where you do business?

A. If the arbitrary price is lower than the price we have been charging, we have to meet it or we don't get the business, Mr. Leisure.

26198 Q. And if you find those prices are too low, what do you do?

A. Well, if they are in the territory in which we sell, we have to meet them, whether we think they are too low or not.

Q. Have you ever declined to sell in a market where the

so-called arbitrary prices prevail, where it was in your territory?

A. No, we have never declined to sell in certain cases like Boston, where it was very low; we have attempted to limit our sales temporarily, but we wouldn't lose any connections.

Q. And by losing connections, you have reference to your regular customers in that territory?

A. Yes, the dealers that we have in that territory.

Q. As I understand it, it is your testimony you did meet the prices in New York and Boston, these arbitrary prices?

A. We did.

Q. Did you have a salesman by the name of Walter Lymburn?

A. Walter Lymburn?

Q. Yes.

A. Yes, he has been a salesman with Hercules for many years.

26199 Q. Did your company, the Hercules Company, ever have any agreement with any other manufacturer of cement, to watch Jenney & Lux?

A. No, sir.

Q. I call your attention to Commission's Exhibit 1162-IE (indicating).

A. No, sir.

Q. During the time that I am questioning you about, with reference to that exhibit, there has been certain testimony here in the record that Jenney & Lux were watched. Did you have any policy at that time for meeting competition from foreign cement?

A. Yes, our policy at that time was not to sell dealers who handled foreign cement.

Q. How many dealers did you have who sold foreign cement?

A. Oh, I wouldn't know how many there were; there weren't a very great many.

Q. In carrying out this policy on foreign cement, did you give your salesmen any special instructions?

A. No, except that they were to report to us whether the dealer handled foreign cement the same way they reported to us what domestic brands the dealer handled. They had general instructions in all cases to report to us brands handled by the dealers with whom we dealt.

Q. And, as part of that, did you attempt to—was it your regular policy to try to find out what amounts of cement were being handled by your dealers?

A. Oh, I don't know that we ever tried to find out any particular amounts, Mr. Leisure.

Q. Was Mr. Linburn acting under any instructions from your office at that time?

A. Lynburn?

Q. Yes.

A. He was acting under his general instructions to get all the information he could as to the handling of domestic and foreign brands.

Q. Did he make reports from time to time concerning dealers whom he found handling imported cement?

A. I presume that he did. I presume that would be part of his regular daily reports.

Q. Did you receive any reports on that subject from the salesmen of any other manufacturer?

A. From the salesmen of other manufacturers?

Q. Yes.

A. No, sir.

26201 Q. Did you have any such policy as the one I have just asked you about, when you were with the Dexter Company?

A. Oh, yes, that's been the policy of all the companies that I have been connected with. We always got reports from salesmen as to the other brands handled by people who handled our brand, and, very frequently, when he would call on a man and could not get him to take our brand, he would also report to us what brands that dealer was handling.

Q. Did the salesman—when you were dealing for French & Company,—did they have similar instructions?

A. They did.

Q. What was your position with the Hercules Company at the time mentioned in this Commission's Exhibit 1162-B?

A. I don't know what time it was, Mr. Leisure; if you will let me see—

Q. (Counsel hands Exhibit 1162-B to witness.)

A. (Witness examines exhibit.) June 1, 1938?

Q. Yes.

A. I was president of the Hercules Company at that time.

Q. Who was the sales manager?

A. D. H.—no. I don't remember just when Don MacBride came with us. I think he was the sales manager at that time; I am not sure about that.

26202 Q. Mr. Brobston, I am referring to the time when Mr. Lyburn was one of your salesmen.

A. Mr. Lymburn, you mean?

Q. Lymburn,—was one of your salesmen,—and there is a charge in this complaint that certain salesmen watched Jenney & Lux; and I think it was around August, 1933. There have been certain exhibits offered here in evidence with respect to that period of time.

A. Well, I don't know anything about this, and I don't know they did.

Q. I am just asking you who your sales manager was at that time.

A. You say 1933, now?

A. August, 1933.

A. E. B. Good, Jr.

Q. Did Mr. Good issue any instructions regarding policies of the company such as this policy without your knowledge and approval?

26203 A. Not as to any general policies. He would consult me as to general policies. As to details, why, he had charge of them.

Q. And if he gave any instructions as to watching dealers as to foreign cement, would that be a general policy which you would know about, or would it be a detail that you would not know about?

A. I think that the policy as to foreign cement is a general policy. I knew of the general policy as to foreign cement.

Q. Now, what was the policy, having received these reports that you have told us about from your salesmen, or from dealers, where one of your customers was stocking foreign cement? What, if any, action did you take?

A. Our salesmen continued to follow him up and tried to persuade him to use our cement instead of foreign cement. If they continued to use foreign cement, we didn't sell them.

Q. Did you take any other measures against him?

A. No.

Q. In what areas was this policy that you described effective?

A. Wherever we came in contact with foreign cement, I should say, Mr. Leisure. I don't know of the exact limits.

Q. Did you have any complaints from dealers in those areas?

A. Complaints from dealers? What do you mean? As to policy, Mr. Leisure?

Q. Yes.

A. The dealers who didn't handle foreign cement
26204 were strongly in sympathy with our policy of not selling dealers who did handle it, and I have heard of a good many complaints from dealers who did not handle foreign cement as to the action of dealers who were competitors of theirs and could furnish foreign cement at a price very much below the price they could furnish our cement.

Q. Did these complaints that you had from your dealers influence your action in any way?

A. Yes; to a certain extent.

Q. Did you have any dealers who were not in favor of such a policy?

A. Oh, yes. The dealers who wanted to handle our cement and foreign cement, both, certainly weren't in favor of it.

Q. Well, you have told us about both kinds. How did they compare? Did you have more dealers who complained about others handling foreign cement, or did you have more dealers that handled both?

A. There were many more dealers who did not handle foreign cement than those that did.

Q. Well, what did you do about this situation when you had some dealers dealing both ways? Did that present any issue that you had to settle?

A. We decided that the business of the dealers that did not handle foreign cement was worth more to us than the business of the dealers who did, and if they continued
26205 to handle foreign cement we stopped selling them. We felt if dealers had foreign cement in their stock it was bad for our business; he would substitute foreign cement wherever he could.

Q. Mr. Brobston, do you still follow the policy with a dealer who sells foreign cement?

A. No.

Q. When did you abandon such policy?

A. I couldn't tell you the date, Mr. Leisure. It has been some time ago, now.

Q. What happened? At one time you say you did and now you say you do not. What happened?

A. We found that a number of our competitors were selling these dealers and it didn't seem to keep out any foreign cement and we didn't want our own trade to suffer.

Q. Do you mean by selling these dealers who were handling foreign cement?

A. Yes, we found that some of the companies were selling these dealers, and we would have lost the business if we didn't sell them, and the policy didn't seem to be effective.

Q. Do you know whether or not any of your competitors continued to sell those dealers right along through all this?

A. I was so advised by our sales department, who complained because we didn't sell them.

Q. Was there any change as to your own dealers? Some of them did not handle foreign cement at one time,
36206 you said. Did there ever come a time when they started selling foreign cement at all?

A. I couldn't tell you that, Mr. Leisure. I wouldn't know that.

Q. Now, Mr. Brobston, your company is charged in this proceeding with having boycotted dealers in imported cement. You are head of the company and anything as general of that kind would be a general policy which would certainly come to your attention, wouldn't it, if it happened?

A. Oh, yes.

Q. Now, what is your answer to that charge? Did you at any time boycott any dealers, as charged?

A. I didn't consider it a boycott in any way, shape, or form. What I considered it to be was exercising our right to determine whether selling to a certain customer would be an injury to our business, or would be a help to our business. It was altogether whether it would be to our advantage or disadvantage to follow that policy.

Q. Well, your company is charged in the complaint with having collusively refrained from selling cement to dealers who dealt in imported cement. What have you to say as to that, if anything?

A. I would say there was no collusion about it at all. I could have sold them, or not; just as I pleased.

26207 Q. I simply wanted to ask you whether the policy that you have told us that you had, and the action which you took, whether you understand, now, or understood then, that in taking that action you were resorting to espionage in issuing such instructions to your salesmen as you have been discussing here, that you have been describing to us?

A. I didn't so think. I felt that it was proper, perfectly proper, for me to get all the information I could as to the business that was being done by my customers.

Q. You told us that it was part of the duties of your salesmen to report to you concerning what foreign cements were being handled by dealers. Do your salesmen make any such reports in territories not affected by foreign cement? I mean, do they report in a similar matter with respect to other cements?

A. In all territories they report what other brands are handled by our customers.

26208 Q. And how long has that been a practice?

A. Ever since I remember.

Q. Did The Cement Institute have anything to do with your policy toward dealers who handled foreign cement?

A. Nothing whatever.

Q. Do you know of any instance where The Cement Institute took any position of any kind with respect to what dealers you should sell and what dealers you should not sell?

A. I have never known The Cement Institute to take any position at all as to who I should sell and who I should not sell.

(The foregoing testimony beginning with "Do you know of any instance where" was adopted by Georgia, Oregon, Giant and Vulcanite.)

26212 Q. Mr. Brobston, did the Hercules Cement Company establish a stock of cement in Brooklyn in July of 1935?

A. We had a stock of cement down in Brooklyn; I presume that's the date.

Q. What was the purpose of your putting that stock there, please?

A. The purpose of putting in that stock—was to meet the competition that we found in New York at that time.

Q. You say to meet the competition. Did you or did you not learn that other competitors had established stocks in Brooklyn?

A. Yes, we learned that stocks had been established in Brooklyn. We put stock in to meet those conditions.

26213 Q. How did you learn that your competitors had established stocks in Brooklyn?

A. Well, in the usual way, the New York salesman reported to our New York office that these stocks were established, and we were immediately notified.

Q. How did you go about meeting it? What did

26214 you do with respect to establishing a stock in Brooklyn, as you have told us?

A. Well, immediately on finding that stocks had been established in New York, we immediately made arrangements to put a stock in which would put us in a competitive position there. Our salesman discovered this stock right away.

Q. Do you know what company had made this—

A. No, I don't, Mr. Leisure. The company, as I recall it—the company that advised me they had put in the stock, I think they said that Allentown had put in the stock; I wouldn't be clear on that, though.

Q. Well, after that, do you recall—did your salesmen thereafter pick up any announcements of your other competitors?

A. Oh, yes, we found stocks being established right away by all competitors there.

Q. What effect, if any, did these terms and conditions have upon your delivered price f.o.b. cars at the dealers' siding in this area?

A. Well, these stocks were not for cement delivered at dealers' sidings. These stocks were established in New York, and any dealer that wanted to use that cement would send their truck down and get the cement; but

26215 when it was shipped direct to a dealer's siding, we charged our regular price, because we figured that what we were doing there was meeting foreign competition, and that if we met the conditions in which these dealers had to buy foreign cement, that we didn't have to go any further. Where there was cement to be deliv-

ered to a dealer's yard that had been tested and held in our bins, we charged the regular New York price for it. My recollection is that these stocks were for these special shipments only, to meet foreign competition.

Q. Well, why didn't you deliver to dealers' sidings f.o.b. car at the same price that you made for these special stocks in Brooklyn?

A. Well, because the price was very unremunerative on the special stocks, and if we could get our regular price on any portion of our deliveries to New York it helped us out just that much.

You probably realize that foreign cement isn't delivered to dealers' sidings, and it is not tested stock. Now, we have in our bins a large amount of tested stock which is shipped direct from the mill to a dealer's siding. That had nothing to do with these stocks.

Q. Were you attempting to meet the competition of foreign cement, or were you attempting to go beyond it?

A. Well, I would say that in this particular case we were just meeting the competition of domestic ce-
26216 ment These domestic stocks were put in, and we met their prices, and, unquestionably, it was for the purpose of meeting foreign competition.

Q. Well, you say you met the competition—do you mean—or, tell us what you did. Did you put cement there on the dock just the same as the foreign cement, or did you meet them, the competition, in that way, or did you merely meet their prices I mean, as to the availability of the cement,—as I understand it, there was certain foreign cement there on the dock?

A. Well, foreign cement comes in and is delivered on the dock.

Q. Yes.

A. And the dealers that want it have to truck it away. Now, this cement was put down on the theory that this was the same method in which foreign cement was delivered there.

Q. I see.

A. And that the dealers at this low price should only get the same service that they could get from foreign cement.

Q. So, then, you didn't only meet the price but you met the other conditions of competition?

A. We—

Q. The availability?

A. I don't know that we met the price, Mr. Leisure, whether the price was as low as foreign cement, I couldn't tell you. It was much lower than our other price.

Q. You do know, do you, that the purpose of
26217 putting the cement there was to meet the competition?

A. Oh, that was the purpose. There is no question about that, and we tried to meet the conditions as well as we could.

Q. Well, now, as to price; what were your reasons for not going beyond it?

A. We didn't want to go any lower than we had to. We didn't want to lose any more money than necessary.

Q. Do you know as a matter of policy when there were changes from time to time in the terms and conditions of these Brooklyn stocks, whether your company attempted to meet your competitors, in foreign cement?

A. That is exactly what we did.

Q. Now, you have told us, there, that there came a time when you withdrew your stocks from Brooklyn.

A. Yes.

26218 Q. Were you the first to discontinue, do you know?

A. No, we were not.

Q. Then why did you withdraw your stocks?

A. There were several reasons. Of course, we didn't find that, keeping out foreign cement, to begin with, and these very stocks, we found trucks were coming in from all over northern New Jersey and taking these stocks, which upset our dealer business in northern New Jersey very much, and it hadn't accomplished the purpose for which it was put it. The result was when we found other people were withdrawing their stocks, we withdrew ours. I think we were a day or so late. We had quite a bit of cement there, and it took some time to dispose of it.

Q. Did you have any contacts with your competitors prior to that time that you established this stock which influenced your action? I mean, did you agree with them to do it, or have any kind of arrangement with them that you would act in concert with them on this?

A. I did not.

Q. Since December, 1935, has your company done anything with reference to meeting the competition of foreign cement?

A. Of course, I don't remember—

Q. Any special prices, I mean.

A. I don't remember that particular date you mentioned at all, Mr. Leisure, but since we withdrew these stocks in Brooklyn, and since we began selling these
26219 dealers that handled foreign cement, again, I don't remember—

Q. You have already told us about arbitrary prices in depressed areas caused by the selling of foreign cement, and we were discussing up to a certain time, and I am trying to find out now since that time whether or not you recall having met any imported cement prices in the depressed area.

A. Imported cement prices?

Q. Any arbitrary prices, I mean.

A. There are arbitrary prices that have nothing to do with imported cement, Mr. Leisure. We have met those arbitrary prices, of course, where we had to. I don't know of any further action with regard to imported cement.

Q. What markets did those prices affect; the ones that you have reference to now; the arbitrary prices.

A. Well, there have been arbitrary prices in a number of places. There have been arbitrary prices around Boston. There have been arbitrary prices around New York.

Q. Does your company at the present time have any policy with respect to discouraging your customers from using foreign cement?

A. We always have the policy of discouraging them, if we can. We would like in every case to substi-
26220 tute our cement for foreign cement in every case we can. We are still continuing to sell people who handle foreign cement and replace it with our cement.

Q. And that is, or is not, your present policy with regard to foreign cement?

A. That is, certainly, our present policy, trying to discourage its use as much as possible and get the business ourselves.

Q. Do you have any advantages over foreign cement?

A. I think so. I think we have some very decided advantages. In a great many cases where cement has to be tested by testing laboratories and held in bins, we can do that. Foreign cement is just dumped on the dock, and you can't do it.

A man who would handle our cement need only keep in stock 132 barrels, whereas the foreign cement comes over in large amounts. The dealer knows we have a supply of cement all the time; that we can put it in bins and test it for him and deliver it to him very promptly. I think that is an advantage.

Q. Do you render any kind of technical service that the importer doesn't render?

A. I don't know what services the importer renders. We render all the technical service that it is possible for us to do.

Q. Is foreign cement available in bulk?

A. Not to my knowledge. I have never heard of any foreign cement coming in in bulk.

26221 Q. Do you try to meet the price at which foreign cement is selling, at the present time?

Trial Examiner Norwood: He has already told us that.

Mr. Leisure: He told us about what happened in a certain depressed—he told us what happened during a certain period of time when they had stocks in Brooklyn.

Trial Examiner Norwood: I think that is all very clear. I think I will exclude that on my own motion as having been covered a couple times.

Mr. Leisure: Well, I just wanted to make clear on the record it hasn't been covered at all. I haven't asked him about it. I asked him about a certain period of time when he put a supply of cement in Brooklyn, and he told us what happened with respect to that, and I asked him about meeting the prices at that time.

This question asks him what he does at the present time with present imported prices.

26222 Q. Have you had any negotiations or conferences with any importers of foreign cement with regard to the competitive situation at seaboard centers?

A. I have not.

Q. As far as your company is concerned, has there been any understanding or agreement between you and any importers regarding the price at which imported cement would be sold, or the price at which your cement would be sold in these port areas?

26223 A. There has not.

Q. Well, now, since this time that you have already testified about, when you established a stock of

cement in Brooklyn, down to the present day, have
26224 you at any time entered into any agreement with your domestic competitors with regard to prices for the purpose of competing with foreign cement?

A. I have not.

26225 Mr. Leisure: Well, dumping may be very technical, Your Honor, but if this witness has to meet it in his every-day work, he has told us what a great percentage of his territory is a territory in which he is compelled to meet foreign competition.

Mr. Wooden: Well, that is the fact, that is why—

Mr. Leisure: And if he tells his customers what he is telling us now, in order to try to compete with foreign cement, that is part of his daily work, no matter how technical it may be.

Trial Examiner Norwood: Well, now, I think I ruled out similar discussion when the Commission was putting in its case, and if in the lack of clarity at that time I failed to rule any one question along this line out, I shall disregard it, or shall strike it on my own motion when it is called to my attention.

I do not think that we need, considering all of the requirements of this case, to go into this thing which touches on the tariff question, and labor at home, and labor abroad.

Mr. Leisure: Well, this witness has to sell his cement.

Trial Examiner Norwood: Yes, but he has told us that there were lower prices, and he met them.

Mr. Leisure: Well, he does more than that. He
26226 cannot meet them until he gets a customer that will be willing to purchase.

Trial Examiner Norwood: I understand.

Mr. Leisure: I have attempted to bring out—now this brings out something that was not clear in the record a moment ago. There was a time when he did meet these lower prices.

Trial Examiner Norwood: Yes.

Mr. Leisure: But there has been a period of time, as the witness would testify, when you cannot meet—when he hasn't been able to meet—lower prices, and in order to sell his cement and not meet the lower price he has had to explain to the customer why he cannot meet the lower price.

Trial Examiner Norwood: Well, just what do you want to prove by that?

Mr. Leisure: I want to prove just that.

Mr. MacIntyre: Your Honor please—

Trial Examiner Norwood: For what purpose?

Mr. Seeley: To meet the charges in the complaint with respect to imported cement.

Trial Examiner Norwood: What charge?

Mr. Seeley: The complaint charges several things here with respect to imported cement. It charges the use of present prices, and charges that the Respondents

26227 have taken other steps.

Now, as Mr. Leisure has pointed out, if there were times when this Respondent could not meet the price of imported cement, and he has pointed out to his customers and explained why, that is a part of the regular course of his business, that is a thing which he does every day in the trade.

That seems highly relevant.

Trial Examiner Norwood: How is it relevant? How does it disprove any charge?

Mr. Leisure: Well, the charge, as Your Honor knows, is that these competitors, these domestic concerns, did these things as the result of collusion. This witness is showing how he operated independently, what he tells a customer in order to induce him to buy domestic cement, instead of foreign cement.

Trial Examiner Norwood: I think instead of spinning it out, you have brought out these present conditions, and the fact that the profit is inadequate, and you have shown cases where they got—took just as little business as they could to hold their trade.

Mr. Leisure: Well, that was during a certain period of time.

Trial Examiner Norwood: Yes.

Mr. Leisure: When he found a shipment—

26228 Trial Examiner Norwood: (Interposing.) Well, what he told his customers is not relevant in this case, in any slightest degree whatever that I can see, so I shall—

Is that a motion to strike?

Mr. Wooden: Yes, Your Honor.

I was about to say that if the testimony were confined merely to what he told his customers, that perhaps I wouldn't have any objection, provided it is not to be taken as the proof of a fact contained in the statements made to the customer.

That is what I say.

Mr. MacIntyre: That is true, because the fact itself has been established by the U. S. Customs Bureau, and the Court of Customs Appeal, as to whether or not there has been dumping, and their decision has been to the effect there has not been dumping, so if we are going to the facts we would have to go into all of those decisions, but as to what this man told his customers, of course, might be another question.

Trial Examiner Norwood: I do not see it goes towards developing a motive any further than the facts of cost and price bear on it, and a situation which this witness has already told us about.

Mr. Seeley: Your Honor—

Trial Examiner Norwood: So I shall allow the
26229 motion to strike, and close the discussion on it.

Go ahead.

By Mr. Leisure:

Q. Now, going to a new subject matter, Mr. Brobston, —how do your shipments of cement compare from month to month?

A. From month to month?

Q. Yes.

A. The shipments vary very markedly. Shipments in the winter months are very low, and go higher in the early spring. Sometimes it may be off in the summer, and then come up in the fall; sometimes they drop off in the fall. It is impossible for us to tell what they are going to be.

Q. Is it affected by anything other than the seasonal factors?

A. It is affected by the amount of business that is available.

26230 Q. Yes. Well, you have given us, then, two factors,—the fluctuation due to seasonal conditions, and fluctuations due to available business.

How do you meet these two factors in estimating your demand?

A. Well, the only way we can do, we start in and take the amount we shipped in the previous year, judge somewhat by that. We get all the billing statistics we can get, all the information we can get on Government projects. We do the best we can, and, even then, we are frequently not right.

Q. Does this fluctuation in demand affect your month-to-month cost?

A. Oh, it affects the cost very much, very materially. For instance, in the winter months when we run only four kilns, our cost is very much higher than when we are able to run eight kilns.

Q. You say four kilns and eight kilns. Does that mean—or can you tell me whether the demand for cement is fairly constant or not?

26231 Trial Examiner Norwood: He has told us that it was not.

By Mr. Leisure:

Q. Well, if it is not, how, if at all, does that influence your efforts to get business, Mr. Brobston?

A. Well, I would say that we try—that we would be apt to go further and take even a lower price in some cases, if we could get business in the dull periods—I mean, any business that could be shipped in January and February and March would be business that we would feel was desirable, and we might take a lower price on that, and an example of that would be that we try to get business abroad in the winter months, if we can limit deliveries to those months.

Q. In this connection, do you make use of any statistics?

A. Oh, in figuring what we can make, we use all the statistics I can get. For instance—

Q. What statistics have you used?

A. What?

Q. What statistics have you used?

A. We use all the figures—all the Government estimates, all the information we can get from the Dodge statistics, from Dun's financial statistics. We use all that we can get.

26232 For instance, when I am making up a budget, a production budget, for the ensuing year, I get all the information I can get from anybody as to what the probabilities are that we will ship in the ensuing year, and make up my budget based on the information I can get.

Q. Do you use the National Forecast in respect to that?

A. That's one of the things that we use, yes.

Q. Now, what is your general policy? Have you made it a practice to cut production in times of slackened demand?

A. Yes, we have had to. What we have done at the Hercules Mill, for the last two years, we have shut down the mill over Sunday. That is equivalent to being shut down two months, and in the—we have only been able to run four kilns in January and February, and then have run no Sundays. We have done that so that we could have continuous employment for the men.

On the four kilns operation we still keep 80 percent of the men on, and in that way we give them an income through the entire year and keep our organization together. It is important to keep our organization.

Q. What is the storage capacity of your mill?

A. About 150,000 barrels of cement; 150,000 barrels of clinker.

Q. Have you increased that capacity any since the plant was built?

A. Oh, it has been very materially increased;
26233 in fact, it has been increased since I went with the company. I had some additional storage—silos built after I came with the company.

Q. Well, now, as to this storage capacity of your mill. Would you say that it does or does not influence you in deciding at what percentage of capacity you will operate?

A. Oh, it is one of the major factors, Mr. Leisure. If I have sufficient storage capacity I can run more through the winter when I cannot possibly ship the cement. I try to bring the stock of cement and clinker on hand down as low as possible in December, so that we can keep on operating and store what we can through the winter, expecting—hoping to ship it in the spring.

Q. Well, you say "ship it in the spring." Is this seasonal variation in demand,—does that increase your cost of production in any way?

A. Oh, yes, shutting down on Sundays increases our cost of production, and running only four kilns in January and February increase the cost of production in those two months very materially.

Q. Well, your overhead is fairly constant, is it not?

A. Oh, that's the reason that these costs increase. Our overhead is constant at all times, and we can only—and the actual mill cost is higher in those months because we keep on about 80 percent of the men and only make 50 percent of the cement.

26234 Q. You mentioned the four kilns and the eight kilns. How many kilns do you have?

A. We have nine kilns which enable us to keep eight on continuously when we are running full.

Q. Do these problems which we have just been discussing—I mean the factors of fluctuating demand and fixed overhead—do they have any bearing on the mill net realization at which you are willing to take orders?

A. They, of course, have some bearing on it.

Q. I mean by that, do they affect your decision, your policy as to whether or not you will take business which yields less at certain times than at others?

A. I am not clear exactly what you mean on that, Mr. Leisure. In the winter time we probably would take a lower net than we could get, probably, which we would have to absorb in order to keep our winter shipments up and help with our sales cost.

Q. Now, in the long experience that you have been manufacturing and selling cement, what has been your observation: Can you tell us whether there has been and there is competition between companies selling cement in the districts in which you have done business?

26236 A. There is and has always been extreme competition ever since I have been in the cement business.

Q. Who determines the policies, Mr. Brobston, of your company, in so far as the rates of operations are concerned?

A. I do.

26237 Q. You mentioned a moment ago that you use certain reports on business conditions and reports on the construction industry. Did you use any statistics on cement when you were with Dexter Cement Company?

A. I used all the statistics I could get, the same as I do today.

Q. How long have you made a practice of following and watching the figures of the Bureau of Mines?

A. Ever since I got them, which was very early in my connection with the Dexter Company.

Q. Did you get them as early as 1900?

A. That was the first year I was there. I don't know whether I got them then, but I certainly got them early in my connection with the Dexter Company.

Q. And what use did you make of them?

A. The same use as I do today. I check my sales with the sales shown in the district, and use it as a guide as to what I should produce, and what my sales department should sell.

Q. How did you decide what you considered to be your share of the business?

A. I had these figures for a good many years, and I had the figures of the sales of the Dexter Company in good years and in bad, and I checked those sales against the total sales from the district, and I figured that my sales department should at all times get as much as I had gotten over a period of years, and if they fell behind that,
26238 I got after them. If they went ahead, I didn't say anything. That was what I wanted, but I had a pretty good guide at the Dexter. For three consecutive years we ran 363 days a year. We shut down only for Christmas and the Fourth of July. I had an exact figure as to what proportion of the total shipments in the district my shipments in those three years were.

Q. Generally, what period of time have you been talking about, 1904 to 1926?

A. You asked me about Dexter. That covers my whole experience with Dexter. That covers the whole time that I was connected with them.

Q. Did you make any effort to go after new business, more business?

A. We tried to increase our business in every way possible.

Q. You say you were making those checks and using these statistics. Did you use any statistics of Mr. Mallory during that time? I am talking about 1904 to 1926?

A. Not to my knowledge. I don't remember using any of his statistics at all during that period.

Q. Were you interested or did you care, particularly, how the balance of the shipments in your district was divided among other companies?

A. I didn't have the faintest interest in that, Mr. Leisure. I was only interested in what I could get.

26239 Q. Now you say you don't know of any of the Mallory statistics you used then. Do you receive those statistics today from The Cement Institute?

A. I was going to say we receive statistics from The Cement Institute, yes.

Q. And how do you use those figures as compared to

the way you used the Bureau of Mines' figures, let us say, when you were with the Dexter Company?

A. About the only thing I use of the Mallory—or, you say Mallory; I always refer to them as the Cement Institute statistics. About the only use I make of them is to use the statistics on shipments temporarily until I get the Bureau of Mines' statistics.

Q. Then you use the Bureau of Mines' statistics still?

A. I fill in the Bureau of Mines' when I get them.

Q. And do you use the Bureau of Mines' any differently today than when you did when you were with the Dexter Company?

A. No different at all.

Q. Is there any advantage to you, Mr. Brobston, in having the statistics furnished by The Cement Institute?

A. I should say there was a slight advantage. I get the figures of shipments about four or five weeks earlier than I get them from the Bureau of Mines.

On the figures that I keep I fill the figures from the Mallory or Cement Institute statistics in with lead pen-
26240 cil and when I get the Bureau of Mines, I rub them out and fill in the figures.

Q. Is that the only reason why you use the figures from The Cement Institute?

A. I have no further use for them, no.

I might ask you in that connection, Mr. Leisure: You are referring merely to the monthly figures of shipments, etcetera, that we get?

Q. Yes.

A. Because we get some figures I use in making up my schedule of production. They give estimates of the amount of cement—

Q. You mean business reports?

A. Yes. They give certain figures with regard to building reports and things like that. I use them in connection with the others.

Q. You said you filled in in pencil the correct figures. What do you mean by "the correct figures"?

A. Well, I find that the figures that I get from the Institute are not the total shipments, really, from the district. I have noticed quite a difference in the figures of shipments shown on that report and on the Bureau of Mines.

For instance, I think the first eight months of this year the Bureau of Mines' figures of shipments were 1,200,000

more than shown by the Institute reports, so that I
26241 use the correct figures in my calculations.

Q. You use these until you get the correct figures; is that what you mean?

A. Yes, sir.

Q. Have you ever been interested or concerned yourself with cement statistics in other districts outside of districts 1 and 2 where you sell cement?

A. No; I pay no attention to the statistics outside of 1 and 2.

26242 As head of Hercules I am familiar with the operating schedules of the company. I estimate the capacity of the Hercules plant from what I know they have been able to produce in the six years that I have been there. In estimating that capacity one of the most important things to take into consideration is the storage facilities for finished cement and for clinker. I take into consideration the capacity for grinding clinker.

26243 Q. Now, as to the production, could the Hercules Mill produce 2,000,000 barrels of cement annually?

A. Without any question we could produce 2,000,000 barrels.

Q. Do you make any use of capacity figures in planning your operating schedules?

A. No, I make no use of capacity figures. The only thing I can base an operating schedule on is what I can sell and ship.

Q. Well, what information do you use in making up your operating schedule for the coming year?

A. The basis of the estimates would be what we had shipped in the current year, and what prospects there were for business in the ensuing year. The prospects for business in the ensuing year I would get in every way I could, Government statistics as to building activities, Dodge's reports, Moodie's reports, Dun's reports, such of the information given as to the building statistics in the reports we get from the Institute, and any other information that I could get that would indicate to me whether we would ship more or less than we had in the current year.

Q. And you use that in making up your operating schedule for the coming year, as I understand it?

A. I have done that for some years back, since going with Hercules.

Q. And do I understand you to say that you make that up about the beginning of the year?

26244 A. I make that up around the end of November so that I can make my arrangements for the year. I gather all the information I can from the sales department.

Each salesman tells me what they think their territory will take. Mr. MacBride checks that and after I have gotten all the information I can get I estimate just how much under those estimates I can make and still have the storage capacity, and then I take it up with the bill, take it up with the union committee, discuss it fully. Tell them how many kilns we can run. Whether we can run Sunday.

I followed that practice for the past four or five years.

Q. Having gathered this information, do you then attempt to adjust your rate to any certain percentage of capacity?

A. No. We adjust it to what we think we can ship in the ensuing year.

Q. How do you decide what amounts should be allowed for any anticipated increase or decrease in business as shown by these reports and other sources of information?

A. Well, I try to start out on a schedule that would give me the minimum amount that I think we can ship or the maximum amount. I mean, I don't want to make any less than I think we can ship. Then if I find we are going to ship more than I had figured, we try to adjust our production to meet the conditions as they come up.

26245 As to whether I am right or not, I can't tell you, Mr. Leisure. That is practically a guess and a prayer. That is about all I can tell you, on that.

Q. Do you furnish the Bureau of Mines with any figures on your production and shipments?

A. We furnish that to them every month.

Q. What about capacity figures?

A. I don't remember ever having furnished them with capacity figures, but the company must have done it some time in the past because the monthly report of the Bureau of Mines shows what percentage the estimated capacity of the district has run during that month.

Q. Do you furnish The Cement Institute with any information on the capacity of your plant?

A. No, I think that is the same as the Bureau of Mines. We furnish them, monthly, the figures on shipments and production. I rather imagine they figure capacities themselves. I have no record of ever having given them a capacity.

Q. You say you do furnish them with your production and shipments.

A. Yes, sir.

Q. Do those figures that you do give them indicate what part of your shipments are standard cement and what are special specifications?

A. No. No, they don't cover that point.

26246 Q. You do collect such information.

A. Oh, yes.

Q. Do you use the statistics furnished by The Cement Institute in any way to regulate your production?

A. We do not.

26247 Q. Well, you said that some of the statistics that you used are furnished by The Cement Institute as a guide in estimating what your future requirements would be, did you not?

A. Well, that is a different report from the one that carries the shipments and production. That is a report which shows the total building statistics that have been issued in the district for the year, and what that means as estimated cement requirements.

Q. I see.

A. As I said, I used that estimate, among others, in figuring what our production would be for the following year.

Q. Oh, I see.

Well, do you use these statistics for any other purpose?

A. No.

Q. Is there any difference between the use that you make today of the information you get from the Bureau of Mines' statistics and those that are furnished by The Cement Institute?

26248 A. I use the Bureau of Mines' figures almost exclusively. As I explained this morning, the only thing which I use the statistics on shipments for—

A. (Resumed) As I said this morning, I use the figures from the Institute temporarily until I get in the correct figures from the Bureau of Mines.

By Mr. Leisure:

Q. Now, what, during the years that you have been selling cement in districts 1 and 2, what has been your observation,—is there an overcapacity in districts 1 and 2?

A. At the present time there is an overcapacity. In 1926 the district shipped 52,000,000 barrels of cement. At

the present time—well, let me see—in 1932, I think
26249 it was, or '33, the total shipments were 16,000,000
barrels. That got up to 27,000,000 barrels in 1937.
The shipments so far this year show that they will run about 30,000,000 barrels, so that while at this particular moment there is an overcapacity, there is no reason to believe that the overcapacity is permanent.

Q. Now, at the present time—you say they shipped 52,000,000 at one time. With the present specifications as they are, Mr. Brobston, could they ship 52,000,000 barrels in districts 1 and 2?

A. I am very sure under the present specifications and present conditions that they could not possibly ship 52,000,000 barrels.

Q. There has been offered in evidence here, and it has been discussed on the record in your absence, a so-called Mallory plan. What was your attitude toward the so-called Mallory plan under the N. R. A. Code, Mr. Brobston?

A. I thought that it was entirely impracticable.

Q. As chairman of that committee, I mean the committee on the plan for sharing the available business, what did you understand was the purpose of the committee?

A. I understood that the purpose of the committee was to comply with a condition of the Code—or a provision of the Code. I understood that the Code provided that there
could be an allocation made of shipments, and that
26250 this committee was to look into the question of
whether any one could be arrived at that would be satisfactory to the cement companies, and to the Government.

Q. Did you think any plan could be devised that would meet with the approval of the industry?

A. I did not, personally.

Q. What happened? Were the individual members opposed, generally, to any sort of plan or were they opposed to the particular plan, or were there plans considered? What happened?

Q. Why was that?

A. Well, I found that none of them would be favorable to any allocation plan unless it gave them some advantage. If it gave them an advantage over the other companies, they were in favor of it.

Q. Did you observe at that time any alignment of companies in any groups; I mean, alignments of big com-

panies versus small companies in this disagreement over what was a fair plan?

A. I don't remember talking to any of the large companies about it at all. The ones I talked to were the smaller companies.

Trial Examiner Norwood: Did they favor it?

The witness: Some of them did and some of them
26251 did not, Your Honor. As I say, if they thought it was to their advantage they favored it. If they didn't, they didn't favor it.

By Mr. Leisure:

Q. In attending these meetings of this committee on the business-sharing plan, what did you attempt to do with the plan?

A. Are you referring to the first committee or the second committee? There was a committee which presented a plan which was considered out in Chicago, but I didn't even go to the meeting. I gave Mr. Coffin my proxy and asked him to vote against the plan. That was the first committee, the first plan.

Q. I am referring to the second plan.

A. The second committee?

Q. Yes.

A. The one of which I was the chairman?

Q. Did you push it in any way? I wanted to know what happened; that is all.

A. We had a number of meetings and there didn't seem to me there was the slightest possibility of getting an agreement, and I so reported back. I didn't see any use in continuing the committee because I didn't see there was any possible chance of anybody ever agreeing to a plan.

Q. And how did you happen, then, to accept chairmanship of the committee on this plan of sharing the business?

26252 A. Mr. Coffin was president of the Institute. He was a very conscientious man and he felt it was his duty to try and carry out any provision in the Code. He was very close to me, we were good friends, and he asked me as a favor to take the chairmanship of the committee. The people who had been trying to allocate on production capacity hadn't gotten anywhere, and he wanted to see if I could get anywhere on the basis of shipments.

Q. I want to call your attention to a Commission's exhibit, by number 800-TT, for identification, and ask you whether you recall having received that letter (handing document to the witness)? Do you recall having received that letter?

A. I suppose I got a copy of this letter—oh, yes; it is addressed to me. I didn't particularly remember it until you refreshed my memory on it.

26254 Q. I am simply asking you whether subsequent to the date of the letter if you drew up any plan.

A. I don't remember the date of the letter, and I don't remember when we had the meetings. I can only say the allocation committee had a number of meetings and didn't get anywhere.

26265 Q. Now, in another Commission's exhibit, 808-MM and 808-PP; in the plan for allocation submitted with your letter, you suggested a percentage of business of 62 percent for the chain companies and 38 percent for the small companies. Let me show you those Commission's exhibits, and then I would like to ask you where you got those figures from (handing documents to witness)?

A. Well, can I make, first, clear that this is not written really as chairman of the allocation committee at all, and this applies only to districts 1 and 2. It has nothing to do whatever with the general plan of allocation.

Q. With respect to districts 1 and 2, how did you arrive at those figures, 62 percent and 38 percent?

A. The old committee had turned over to me a stack of papers this high (indicating), and I studied them as carefully as I could when I was wrestling with this thing, when I found it was impossible to get any agreement on a national scale I made the suggestion there might be a possibility of getting some method of complying with the Code in the individual districts, and when I sug-

26266 gested this to districts 1 or 2, I had checked up carefully the shipments in that district for about 5 years, from this material that had been turned over to me, and as near as I could tell the chain companies in that 5 years had gotten about 62 percent and the individual one-plant companies had gotten about 38 percent. There was nothing definite about it. I just had to do the best I could, because all the figures were different.

Q. Then you did consider it from the two groups, the chain companies and the smaller companies.

A. Yes, in districts 1 and 2 I conceded that would be the natural division between the chain companies and individual plant companies for the reason that the chain companies had business outside of that district. They would have to tend to their own business. I didn't know anything about it.

26267 Q. In Commission's Exhibits 918-U to W, for identification, what was the purpose of the plan that you submitted in that letter (handing documents to witness)?

A. The purpose of the plan was an attempt to formulate an allocation plan under the terms of the Code and which would be satisfactory to the cement companies and to the Government.

Q. And you wrote that letter, Mr. Brobston, did you? That is your signature?

A. Yes, that is my signature.

26268 (RESP. EX. 1098-A, 1098-B, and 1098-C was offered and received in evidence.)

By Mr. Leisure:

Q. Your letter refers to shipments from a district in excess of the quota. What did you mean by that (handing document to the witness)?

A. Did you find just where it was? Well, I should say that unfair trade practices in that case would be their shipping more than their quota, if a quota were agreed on, and, in addition, what I had more in mind was any company coming in and making a secret rebate which would take business out of this particular district.

Q. Did you consult anyone else before suggesting this quota plan?

A. No. No; the committee had given up all hope. I worked that out afterward.

Q. I notice in the same exhibit you make reference to the selecting of new members of the committee. Were new members appointed to this committee?

A. At the time I took the chairmanship there were a number of new members appointed to the committee. I presume that is when you mean.

26269 Q. I notice that, Mr. Brobston, you suggest, in Commission's Exhibit 598-B to F,—you proposed that the committee be discharged; is that correct?

A. Yes; after we found we couldn't get together I didn't see any use continuing.

Q. And it suggests—the same exhibit suggests that a new committee was to be appointed. Was anything further done about that?

A. No, nothing ever was done about it.

Mr. Wooden: What exhibit is that?

Mr. Seeley: It is the minutes of industry meeting of July 10, 1934, Commission's Exhibit 598-B.

By Mr. Leisure:

Q. Did any plan for sharing the available business after that ever go into operation?

A. There was never anything more done about it.

Q. Well, now in the districts where you do sell, including this period, and up to the present time, were there ever any getting together, and any meeting of minds, to your knowledge, between your competitors in these districts 1 and 2, and, for that matter, in any other districts, to your knowledge, that any one district should ship or should not ship into another's territory?

A. I never heard of any such meeting.

Q. And I think you have in effect covered this,
26270 but not in words—has there ever been any arrangement in districts 1 and 2, to your knowledge, for the allocation of business?

A. No, sir.

Q. Or, for that matter, in any districts where you do business,—any territories?

A. I only do business in districts 1 and 2.

Q. One and two?

A. And I don't know anything about any of the other districts.

Q. Did your company ever refuse any business, Mr. Brobston, on account of these negotiations having to do with allocation of business?

A. No, sir; we have never refused any business that we could get,—if the credit was good.

The witness identified Resp. Ex. 1099 as a statement which he made up showing the total shipments of
26271 Hercules cement, and the total shipments of cement

in districts 1 and 2; and it shows the percentage of gain or loss each year in Hercules' shipments, and the percentage of gain or loss each year in shipments in the districts. Hercules' shipments do not include shipments made for the Vulcanite Portland Cement Company. There are only shipments made for Hercules' own account, its own business.

Examination on Voir Dire by Mr. Wooden.

Q. Was this paper made up for the purpose of using here (referring to Respondents' Exhibit, for identification, 1099)?

A. Yes, sir.

Q. Did you personally have anything to do with it, or did you have your auditor make it up?

A. I personally made this up myself from my own records that I use every day. I even figured the percentages myself.

Q. You didn't use the Mallory shipment figures in making this up?

A. Oh, no, no, those are the actual shipments 26272 shown by the Bureau of Mines.

Q. Well, the Bureau of Mines' figures include some companies that do not report to Mr. Mallory; is that not correct?

A. I think so.

Mr. Wooden: No objection.

(RESP. EX. 1099 was offered and received in evidence.)

By Mr. Leisure:

Q. Now, the record, Mr. Brolston, indicates that you made sales—that your company made sales to the Vulcanite Portland Cement Company at a price, original price of 65 cents; is that correct?

A. That is correct.

Q. The record also shows that Mr. Kind made a specific price which was what he estimated the cost to be at that time, at least you have so testified. What do you mean when you use the word "cost" in that sense?

A. The 65-cent price covered only the actual mill cost the cost of putting the cement on board cars. It carried no figures for our selling cost, or overhead, or financial expense; it carried nothing at all except straight mill cost.

As a matter of fact, Mr. Kind wanted to make it on a cost basis from month to month, but Mr. Moyer
26273 wasn't willing to take the chance on that, and so Mr. Kind made a price, but he wasn't willing to take the chance on coal and labor, so he put the provision in for the price going up and down, as coal and labor went up and down.

Q. Was that figur to be increased or decreased from time to time in accordance with the fluctuations of cost, of labor and fuel?

A. Yes, sir.

Q. When you said "cost," when you spoke of estimated cost in connection with the price to Vulcanite, did you or did you not refer to bin cost, or total cost?

A. No, not bin cost, because it included the cost of putting it on board cars. It included bin cost, plus packing and shipping expense. The cost of putting it on cars, which included—

Q. Did it include raw materials?

A. What?

Q. Did it include raw materials?

A. Yes, it included all the raw materials.

Q. Fuel, labor, supplies?

A. What say?

Q. Fuel, labor, and supplies?

A. Yes.

Q. Administrative?

A. No administrative.

Q. Financia, expense? How?

26274 A. No administrative, it was pure—

Q. Financial?

A. No financial, it was pure mill cost, no selling.

Q. No selling?

A. No.

Q. Did it include any general overhead?

A. No.

Q. Well, then, do you mean then to just include the elements of mill cost, or what was necessary to put your cement on board cars?

A. Yes, sir.

Q. Did it include any charge for interest on capital investment?

A. None whatever.

Q. Any federal or State income taxes?

A. No, sir.

Q. Do you know, Mr. Brobston, whether Mr. Kiird, in submitting this figure, and in setting the price to Vulcanite, figured in any amount for depreciation?

A. No, it doesn't cover any amount for depreciation.

Q. Well, you said you attempted to manufacture cement for Vulcanite in order to get the benefit of the reduction in cost. What did you mean by that?

A. I meant that if we made enough cement to fill both our own orders and Vulcanite orders, that the reduction in the cost of the cement, that of shipping on
26277 my own orders, would be very material.

Q. Well, on the cement that you sold to Vulcanite, do you have any selling expense?

A. None whatever.

Q. Or administrative expense, or general overhead, on those orders from the Vulcanite Company?

A. None at all.

Q. Do you have any credit risk or claims on those sales to Vulcanite?

A. No, Vulcanite pays us twice a month. We have no trouble about it at all.

26281 Q. I want to take up the subject matter of standardization, Mr. Brobston, for a moment.

You said that you were a member of a committee,
26282 C-1. Does the Committee C-1 issue any specifications for Portland cement?

A. They do not issue any specifications. They pass on the specifications, then they are voted on by the Society A.S.T.M., and the society issues the specifications.

Q. Was Committee C-1 in existence when you first joined the A.S.T.M.?

A. Oh, yes.

Q. Has it ever issued any specifications for cement, to your knowledge?

A. Not to my knowledge, except through the society.

Q. Yes.

A. C-1 approves them, and then they are issued through the society, as far as I know.

Q. Now, will you explain to us why that is done,—what are these specifications prepared by Committee C-1 and submitted to the A.S.T.M. for adoption?

A. C-1 is a committee of members who are competent to deal with the subject of cement. It is made up of chemists and engineers and highway heads who are users or manufacturers of cement; also testing laboratories come in there. They are the men who are most familiar with the use and manufacture of cement, and this body is gotten together for the purpose of issuing specifications that will provide that the public gets a good product.

26283 Q. How many subcommittees has Committee C-1, if you know?

A. Oh, I don't know, Mr. Leisure. They have got a great many subcommittees. I don't know how many, Mr. Leisure.

Q. Do those subcommittees deal with technical problems?

A. Oh, yes, all of them.

Q. Are you on any technical committee yourself, Mr. Brobston?

A. I am not on the actual technical committees. I am on the sponsoring committee. That is a sort of steering committee that considers whether it is worth while bringing a subject into the meetings of the committee. I am on the sponsoring committee on Portland cement.

There are other sponsoring committees on high early, and I think on natural cements.

Q. Does Committee C-1 also deal with high early strength?

A. Yes, sir.

Q. And natural cement?

A. Yes.

Q. As to the other members on this sponsoring committee, are any of the other members of that committee representatives of any cement company?

A. One other member.

Q. How many members are there, who are on it, if you know?

A. The committee consists of six members. At the present time there are only five members due to the death of Thadeus Merriman. His position on the com-

26284 committee will be filled at the next meeting I presume.

Thadeus Marriman was the engineer in charge of the New York Water Supply. He died a month or so ago.

Q. As I understand you, all of the other members are men who are not connected with the cement business?

A. No, the other members are Mr. Jackson, who is the head engineer of the Bureau of Public Roads down here. The member—oh, Walters, the chief engineer of tests of the Erie Railroad, he is a member, and the head of the Testing Bureau of the T.V.A. is a member.

Q. Is there any connection between the National Bureau of Standards and this A.S.T.M.?

A. No direct connection except that the head of the Bureau of Standards is chairman of Committee C-1, Mr. Bates.

26290 Q. What is your experience with respect to that, Mr. Brobston,—does the Department of Commerce inspect your laboratories?

26291 A. The reasons for making these inspections are that before this Cement Reference Laboratory was established, the standards, the machines for testing, the methods of testing, were so different that the people in the Bureau of Standards naturally felt they could not rely on reports, on account of differences in laboratories, and this was started as a help not only to the laboratories, to show them how they could be made standard, and how they could get results that would synchronize, and also to be sure that the cement that the Government was getting would be properly tested at the laboratory so they could rely on the results.

26292 By Mr. Leisure:

Q. What tests did you ordinarily meet when you started manufacturing cement? For instance, take at the time when you were with the Dexter Cement Mill,—what test requirements did you meet for the manufacture of Portland cement?

26293 A. At that time the requirement was at 75 per cent, and should pass on through a 200-mesh sieve, and have a mild boiling test.

Now, that was prior to 1904. I think it was about 1904, that the A.S.T.M. first adopted standards which had a few requirements in addition to those, but they were along that line. Those are the only two that I remember specifically. I don't remember what tensile strength was asked for.

By Mr. Leisure:

Q. Was it necessary at that time for all of the cement that you made,—or did all the cement that you made in those days meet those tests?

A. No, I am sorry to say it did not. In a great many cases it did not pass the boiling test.

26294 Q. Was it necessary on any job to have your cement tested by any outside laboratory?

A. Yes, it was occasionally, even in those days. We had to very carefully select the bin that we gave them in those days.

Q. Does your cement that you manufacture today, does it exceed the minimum specifications?

A. It does very materially.

Q. Does the competition that you have in that direction have anything to do with your policy in attempting to exceed the minimum specifications?

26295 A. It has gradually forced us to do it.

Q. You are not speaking now of the high early strength cement, are you?

A. No. We don't manufacture high early strength cement. The requirements of high early strength cement have nothing to do with our standard product.

Q. In order to meet this competition, is it necessary for you to test other people's cement also?

A. Yes, we always test the cements of other companies very frequently, to make sure that our product is up to the standard that they are maintaining.

26298 Q. As to these federal specifications that we mentioned yesterday, in considering Commission's Exhibits 1340 and 1399, did you take into consideration your storage facilities in considering those bids, as to whether or not you would bid (handing documents to witness)?

A. Yes, we would take that into consideration. I don't know that I would bid on them, anyhow, under the circumstances.

Q. I would like to call your attention to a Commission's exhibit, 637-2-C to 2-E, which purports to be minutes of a meeting of members of districts 1 and 2 (handing document to witness).

Were you a member of that committee, Mr. Brobston?

26299 A. According to this exhibit I was a member of it, Mr. Leisure.

Q. What was the purpose in appointing this committee, if you know?

A. I beg your pardon?

Q. What was the purpose in appointing this committee, if you?

A. Yes, I know what the purpose was.

Q. What was the purpose?

A. The specifications in the State of New Jersey, the published specifications were perfectly satisfactory, but this chief highway engineer, Mr. Gage, was putting pressure on the cement companies to furnish him with a special cement which he thought was better than the regular cement, and this committee was appointed to see if they could not get Mr. Gage to accept the standard cement and comply with his own specifications.

26300 Q. Were you in favor of uniform specifications, Mr. Brobston?

A. I most certainly was.

Q. Why, Mr. Brobston?

A. Because the New Jersey cement, if we had made it the way Mr. Gage wanted us to, would have cost us more money; whereas, we could comply with his published specifications without costing any more.

Q. Would that affect your storage space in any way?

A. Oh, if we made—well, I don't think that that particular thing would, Mr. Leisure, because New Jersey cement would have to be stored no matter which way it was. New Jersey tests their cement, and has it shipped out of special bins, whether under the Gage specifications or the standard specifications.

Q. Has there been anything to show that these special specifications are better than the standard Portland cement—

A. Of Mr. Gage's?

Q. Yes.

A. I think certainly there has not been anything produced that is better; Mr. Gage don't agree with me.

Q. Have you noted any increase in the special requirements of States?

A. Is that a question? I notice it all the time, Mr. Leisure.

Q. Any increase, I said.

A. How?

26301 Q. Any increase, I said.

A. Oh, the increases are coming along right away, and it is making it more difficult for us all the time; not only to make the cements but to store them.

Q. You say more difficult,—does it affect your costs?

A. Very materially. The special cements we make cost us anywheres from six to sixteen cents a barrel more than our standard product.

Q. Mr. Brobston, I show you Respondents' Exhibits 1163-A, B, and C, and ask you to tell us what it is (handing document to witness)?

A. This is the last specification issued by the New York State Highway Department.

Q. The document you hold in your hand seems to be marked "15-A." The Commission exhibits are marked "15-C." I am not talking about the Reporter's marks now.

A. Well, the Commission exhibit is probably right. I have never furnished any cement under 15-A. 15-A only went into effect on contracts that were let after October 18th.

26302 15-C,—

Q. 15-C—what is that?

A. 15-C has been in effect for some time.

Q. And what was that?

A. That was the standard specifications for New York State Highway cement, for some time.

Mr. Wooden: October 18,—you mean last month?

The Witness: Yes, this was a change from 15-C.

By Mr. Leisure:

Q. How does 15-C compare with the standard product?

A. 15-C?

Q. Your standard product, yes.

A. 15-C costs us about 15 cents a barrel more to make than our standard product. We have to add limestone, iron pyrites, and sand, to our ordinary mix, in order to make 15-C.

Q. Do you get any more money for it?

A. No, sir; we don't get any more money for it, I am sorry to say.

Q. Why not?

A. Because, unfortunately for us, the plants located on the Hudson River can make that at practically their regular cost. Their raw materials enable them to make it

without any extra expense, and we have to meet their price if we want this business.

Q. There is a Respondents' Exhibit No. 397
26303 (handing document to witness),—does your company make that Portland cement?

A. Well, could you tell me, is this the Merriman cement, without my looking all the way through it?

Q. It is the Merriman.

A. No, we don't make the Merriman cement.

Q. Why don't you make that, Mr. Brobston?

A. Because we would have to spend a very large amount of money for equipment before we could comply with the specifications in this—before we could comply with these specifications. Our mill is not equipped with the necessary machinery to meet this specification.

The witness identified Resp. Ex. 1104 as a capitulation of the special cements that Hercules has sold during the years 1934, 1935, 1936 and 1937.

26304 The witness identified Resp. Ex. 1105 as a record of the special cements ground by Hercules in the year 1938. The meaning of the heading sulphate resistance on Resp. Ex. 1104 is those were two orders that Hercules filled, one for the Metropolitan district of Boston and one for the County of Queens, and they called
26305 for special specifications, calling it sulphate resistant cement—that is what they called their special specifications. That is not the same as S.S.C.-211 dated September 30th. Hercules has never made any cement to comply with S.S.C.-211.

Q. While they are looking at that, Mr. Brobston, you mentioned that your cement testing laboratory does use Ottawa sand for testing purposes.

A. Yes.

Q. How does commercial sand compare with Ottawa sand?

A. Well, the only reason for the use of Ottawa sand is that that is a uniform sand especially prepared for testing, the idea being that if you use a uniform sand that the results from various laboratories will be the same. Anybody using the local sand would have a variation which don't occur in the Ottawa sand. As for the results in the tests, there is no difference.

26306 (RESP. EXS. 1103-A, B, and C, 1104 and 1105 were offered and received in evidence.)

26313 Washington, D. C.,
November 2, 1939.

26316 JOSEPH BROBSTON thereupon resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Leisure.

26333 *Cross-Examination by Mr. Wooden.*

26334 Q. Mr. Brobston, some time in 1933 did you become connected with the Hercules Company?

A. April 15, 1933.

Q. And you had been with the Nazareth Company for some years prior to that?

A. I went with the Nazareth Company in 1926.

Q. And prior to that you were with the Dexter Company; is that right?

A. I was with the Dexter Company from 1900 until they were merged in Penn-Dixie.

Q. When?

A. When they were bought by the Penn-Dixie.

Q. When was that?

A. I think the settlement was August 1, 1926.

Q. When you testified that you had never had any agreement or understanding with competitors, were you making the statement covering your whole experience in the industry?

A. Yes, sir.

Q. For 39 years?

A. Yes, sir.

Q. Were you speaking merely so far as your personal experience went, or were you speaking for the several companies that you had been connected with?

A. I was speaking for the several companies with which I had been connected. I have no knowledge of
26385 their ever having engaged in anything of that kind.

Q. Were you in a position to have known it if the Dexter Company or the Nazareth Company or the Hercules Company had ever participated in any agreement or arrangement with competitors for restricting competition?

A. I believe so.

Q. Do you include in your statement that there has

never been any agreement or understanding the entire period of your experience?

Mr. Leisure: The witness answered that once.

A. I will answer it again.

Trial Examiner Norwood: Let him answer it. This is cross-examination.

A. I do; I mean my entire experience.

By Mr. Wooden:

Q. Do you include the Code period, the N.R.A. Code period?

A. I do. I don't consider that any agreement. I consider that was something I was forced to do under the law. I don't consider it an agreement.

Q. You weren't aware, were you, that the provisions of the Code were debated and discussed among members of the industry before it was formulated, and that the members of the industry formulated it?

A. I believe that is true.

26336 Q. You don't consider that an agreement?

A. I do not; no.

Q. Did any company that you were connected with sign The Cement Institute's Code of Ethics of 1929 and 1930?

A. Let us see; that was when I was with the Nazareth. I believe so. I wouldn't necessarily know what Mr. Coffin had done in that instance.

Q. You wouldn't consider the Code of Ethics of The Cement Institute, signed by the various members, as constituting any agreement among them?

A. I would not consider it as an agreement. It might mean that their minds were in agreement as to the necessity of it.

Q. Do you draw a distinction between meeting of men's minds and an agreement that they are bound to carry out?

A. I draw a very marked distinction.

There is, also, in Funk & Wagnalls' dictionary a very marked distinction.

Q. In other words, you would say that an agreement among competitors that was even signed and sealed was not an agreement because it couldn't be enforced, would you?

A. Oh, no. An agreement, if it was signed and sealed, is an agreement.

Q. Regardless of whether it is legally enforceable, or not?

A. I don't know if it would be legally enforceable.

Q. You are not aware that agreements in restraint of trade are not legally enforceable?

26337 A. I am not an attorney. I don't know anything about that, Mr. Wooden.

Q. I take it you include in your testimony the period of time when the Trade Practice Committee took over after the N.R.A. Code went out, when you say there had been no agreement or understanding between your company and others?

A. I would certainly say that I had no agreement or understanding.

Q. Do you draw a distinction between agreement and understanding and concerted action among a number of people?

A. I would draw this distinction, Mr. Wooden: I would say that I might be in agreement with a policy, and follow that policy, but that would not necessarily mean that I had made an agreement to follow it.

Q. Even though you did follow it?

A. Even though I did follow it. My mind might be in agreement as to the advisability of that policy, but that wouldn't necessarily mean, at all, I had agreed with anybody else to follow it.

Q. Do you say that in your whole experience you have never consulted and discussed and conferred with competitors as to what the proper competitive policy should be?

A. No, I wouldn't make any such statement at all. I frequently talk all matters in the industry over with
26338 competitors.

Q. How frequently?

A. Whenever I would happen to meet them, Mr. Wooden.

The conversation, naturally, if we are both in the cement business, the conversation naturally turns to things in connection with how we should run our business.

Q. And do you have meetings at which you discuss matters of competitive policy?

A. Well, I wouldn't say that we have meetings where we would discuss matters of competitive policy. I have been to a great many meetings in my 30 years in the ce-

ment industry. I have been active in most of the associations formed.

Q. Haven't you attended such meetings where you discussed questions of competitive policy?

A. I should say probably that in meetings of The Cement Institute questions of policy have been discussed. There is no doubt about that.

Q. Haven't you discussed questions of policy at meetings of the Northeastern Division of the industry?

A. Oh, yes.

Q. How often have you had such meetings?

A. I wouldn't be able to tell you that, Mr. Wooden. I think the minutes would show that. I don't know.

Q. Are they held every month, or three months, or year, or what?

26339 A. Certainly not every month. I think they are held at irregular periods.

Q. On whose call?

A. The Institute meetings?

Q. The Northeastern Division.

A. I should imagine they would be called by the secretary; I don't recall who signed any of the notices.

Q. Have they been called by trustees of The Cement Institute?

A. That I don't know.

Q. For the district?

A. I don't really know who calls those meetings at all, Mr. Wooden.

Q. Who presides?

A. At those meetings?

Q. Yes.

A. I guess the president of the Institute.

Q. Well, I don't want you to guess. Don't you have any recollection of who has presided at any such meetings?

A. I couldn't tell you who had presided at any particular meeting, except Mr. Coffin was president at times, and I suppose while he was president he presided.

Q. I am talking about the Northeastern Division.

A. Is there a different president in the Northeastern Division than in the whole Institute? I don't know of any.

Q. I am talking about the meetings of the Northeastern Division.

26340 A. Oh, you are referring to trustees of districts 1 and 2?

Q. Yes.

A. Oh, well, then, I suppose that either one of those trustees might call a meeting if anything of interest came up in those districts, they might call a meeting.

I am sorry, I thought you were referring to the whole Institute.

Q. No, no.

They have called such meetings from time to time?

A. Oh, I think there is no doubt about that.

Q. You have attended such meetings from time to time?

A. I have at times.

Q. You say you talked to competitors about competitive problems. Do you sometimes talk to them over the telephone about it,—about such matters?

A. Very seldom over the telephone, Mr. Wooden.

Q. Do they sometimes call you up?

A. Yes, I have been called by competitors at times.

Q. Do you say at none of these meetings that you have attended over a period of years that there has been any effort— You say there has been no effort to reach an understanding among the competitors present as to prices or sales policies?

A. I don't remember any action at any meeting of that kind where any effort was made to arrive at an
26341 agreement on the question of prices. In a great many of these meetings the question has come up to find out whether there was a meeting of minds as to the advisability of certain policies; I don't think there is any question about that.

Q. Do you say that at no meetings that you have attended has there been an effort to arrive at a meeting of the minds on such matters as terms and conditions of sale?

A. Oh, I should say that terms and conditions of sale have been discussed very often.

Q. Well, my question was—

A. But I say that, to my knowledge, there has never been any agreement among those people present as to what they would do which would bind them to follow any such terms and conditions.

Q. Well, you gave us your conception of "agreement" a while ago.

A. Well—

Q. Do you say that there has been no effort to reach an agreement or understanding among the members, or among the competitors, at such meetings?

A. I can't answer for the competitors; I can only say that I have not.

Q. Well, I am talking about meetings at which you were present, and where competitors were present.

A. Oh, you mean meetings at which I attended?

26342 Q. Yes.

A. I thought I had answered that, Mr. Wooden. I said unquestionably there has been discussion, and there would always be a hope that there would be a meeting of minds; but I don't know that I could go beyond that.

Q. Do you say there has never been any effort, at meetings that you attended, to decide or to discuss—say "discuss" instead of "decide"—the question of what classes of trade should be handled through the dealers, and what should be handled directly?

A. I don't remember attending any meeting where that particular point was discussed, Mr. Wooden.

Q. Well, is it just a lack of memory, or are you willing to say one way of another that it did or did not occur?

A. Well, if I don't remember anything, it probably did not occur; but, as I say, I can't remember everything that was discussed at every meeting I attended, Mr. Wooden.

Q. Do you say there has never been any attempt or effort at any meeting attended by you to discuss and determine the question of what constituted a legitimate dealer?

A. It may have been discussed. I certainly don't know of any meeting where it was determined, at which I was present.

Q. You say you have discussed these various matters in the hope of arriving at some kind of determination.

A. No. I didn't say that at all, Mr. Wooden.

26343 I said that I had occasionally discussed those matters with my competitors.

Q. Sometimes at meetings and sometimes outside of meetings; is that right?

A. Oh, yes. For instance, you asked me whether I occasionally met them; I do, and talk to them, naturally, about our business.

Q. Will you describe the various subjects, if you recall

them, that have been discussed at meetings that you have attended with competitors?

A. Mr. Wooden, I have been attending meetings of the Portland Cement Association for 39 years; I have been attending meetings of the Institute; I have been attending meetings that were called on special occasions of the different districts,—mostly in districts 1 and 2. I know very little about the other district, and I don't see how I can possibly specify as to the subjects, because, if you would specify any particular meeting, if I remembered it, I would answer you.

Q. Well, can't you give us some light upon the subjects that you remember have been discussed at various meetings?

A. Well, the—you asked me about being called on the telephone. The last time I was called on the telephone in regard to anything of a collective nature was to ask me whether I was going to sign the petition to the State Department. I guess it was prepared by our attorney on the question of the reduction in the tariff that was proposed in Belgium. I think that was the last thing
26344 that we had up. Before that, I think it was, we discussed the question of this proposed specification in New York City, and when I go to meetings of the Portland Cement Association we discuss everything in connection with mill management. In a great many of the cases, for instance a question of coal rates, everything of that kind may come up.

Q. Do you discuss at such meetings market conditions?

A. At times, yes.

Q. Do you discuss the question of whether demand is strong, the relation of demand and supply, goods?

A. I get all the information I can with regard to that, not only from the competitors but from anybody else whom I think knows.

Q. Do you discuss the question of whether or not prices are being well maintained?

A. Now, I don't believe that that question would come up, because I don't believe any of them would know about it; I mean—

Q. Do you mean to say that nobody in the industry knows whether prices are well maintained, or not?

A. Well, I should say—

Q. Why wouldn't they know about it? I thought everybody knew about it?

A. I should say that I know the reports that I get from my salesmen; sometimes I believe them and sometimes I don't.

Q. Do you discuss the reports from your sales-
26345 men with representatives of other companies as to whether or not they are true?

A. I may; but, I don't know, Mr. Wooden, I wouldn't be surprised; it is a matter of general interest.

Q. And sometimes other companies take up with you the reports that their salesmen make about your company?

A. If I would meet them casually, they might. I never went to any meeting where that was a subject brought up for general discussion.

Q. In such cases,—it is cases where your salesman reports that some competitor is making a better price than you, is it not?

A. Excuse me—I did not get that question. Will you read it?

Trial Examiner Norwood: Read it.

(Last question read.)

A. Well, is that a question?

By Mr. Wooden:

Q. Yes. My question is, when you have discussed the question as to prices with competitors on the basis of reports of your salesmen,—you had reports, didn't you, that some other competitor was making a better price than you?

A. Oh, I might have; I don't know.

Q. And haven't other competitors discussed that question with you on the basis of their salesmen's reports that you were making a better price than they?

26346 A. I should say so—oh, whether I was?

A. Yes.

A. No, I don't remember them saying that I was.

Q. Well, didn't they have reports from their salesmen at times that there was something that the Hercules Company, or the Nazareth Company was doing that had the effect of lowering the price?

A. No, I am glad to say that they don't accuse me of changing my price. My policy is well known, and I don't remember—

Q. I see.

A. —any of my competitors accusing me of that.

Q. In other words, you have more reason to think that your competitors—

A. What say?

Q. You have had more reason to think that your competitors have sometimes cut the price than they have had to think that you have; is that right?

A. I wouldn't say that. What I say was, that I got reports at times from my salesmen that they had heard that a certain company had cut the price. Sometimes I have thought it might be true and sometimes I haven't believed them, Mr. Wooden.

Q. And, in any event, you checked up with the superiors of those other companies' salesmen to find out whether or not it was true?

A. No, sir. I don't go to the company that is
26347 accused at all. If they bring me proper proof, then it is up to me to determine whether I will meet it; but if a man brings in a report and tells me that certain companies cut the prices, I don't go to the head of that company to find that out at all.

Q. What is it that you do about these other companies, then? You said you discussed your salesmen's reports.

A. Oh, yes, I said I did discuss occasionally things; I do not say that I ask anybody anything, Mr. Wooden. What I said was that—you asked me whether I ever talked about those matters when I met with my competitors, and if I lunched with one of them we are very apt to talk on the subject of whether we feel that the market is in good condition, whether the demand is good.

Q. And don't you talk about whether your salesmen's reports are well founded, or not?

A. Very seldom.

Q. Now, can you tell us any of the other subjects that you remember as having been discussed at meetings of the industry that you attended, besides the ones that you have named?

A. Well, how far back do you want me to go, Mr. Wooden?

Q. Well, I don't want to limit you. You have not limited your direct testimony, and I just want to see if you can specify some of those things.

A. Well, I testified yesterday that at one meeting of the districts 1 and 2, we discussed this report of
26348 the Allocation Committee. There have been, as I said, meetings where we discussed the proposed

specifications of New York City. That was one of the recent meetings.

Q. Well, can you give us something else, now?

A. We have had meetings called to discuss the expense of this case. We have had a number of meetings on a number of different subjects. As I say, sometimes we talk about mill questions. Sometimes there are things, as I say, about this Allocation Committee, about this suit—I wouldn't be able to say definitely—as far as meetings of districts 1 and 2 are concerned, I don't believe I have been over—maybe I may have been at one this year. Oh, yes, we had this one about the New York situation. There have been very few of them, Mr. Wooden, in this last year or so.

Q. When you speak of the New York situation, you mean the specification matter?

A. Yes.

Q. That is the specification of New York State, or New York City, where they wanted—

A. I referred really to both things. We had a meeting, not long ago, of those people interested in these districts 1 and 2, to discuss the question of the New York State road situation.

Q. Now, Mr. Brobston, I believe you said that you made a number of special cements, that cost you
26349 from 6 to 16 cents more a barrel than to make your standard cement,—is that correct?

A. The cement that we furnish on the New York State road work costs us about 16 cents more than our standard cement.

Q. Is all of your cement, whether of special character or not, sold at the price of standard cement?

A. It is.

Q. Has that always been true?

A. The—I was trying to remember whether we did ever get anything special, but I don't remember anything. The particular cement that I refer to,—the reason we cannot get any more for that is because it is the standard cement of the Hudson River mills, and if we want to get in on New York State work we have got to make cement that will meet those specifications.

Q. You have never—

A. To do that—oh, pardon me.

Q. Strike that.

Now, you said that your standard cement was much above the minimum requirements and specifications.

A. That is quite true.

Q. How much above it?

A. Well, we could—

Q. How far below does it fall, the high early strength specifications?

26350 A. Well, for instance, on the fineness, there are some things it is hard to compare, but I can give you a comparison on fineness. The standard specification has been 78-percent through 200-mesh sieve, for a great many years. Through competition of other brands, who have kept raising their fineness, we now grind it to about 92 percent through a 200-mesh sieve. The one day's strength is not provided for in the specifications, but we have raised our quality—well, I won't say qualify, because I am not sure about that—but we have raised the strength in one day by this grinding from, say, to about 60 or 70 pounds in one day to 150 pounds.

Q. How close is that to the high early strength requirements?

A. Oh, the high early strength, I think, runs over 250. I have never made any high early strength, but I think that they run considerably above that.

Q. Would you say that your cement is midway between the minimum standard specifications and high early, or is it more than midway—above midway?

A. Let me get clearly just what you mean by that, Mr. Wooden. I think I understand you. I want to be sure. Your mean that is my standard cement about half way between, in strength—

Q. Yes.

A. —or is that what you mean?

Q. Well—

A. Well, I should say it was about half way in strength between the minimum specifications and high early.

26351 Q. Yes.

Q. Mr. Brobston, is the rapidity of tensile strength the distinguishing characteristic between the standard and the high early strength?

A. Yes, sir; that is the real difference.

Q. And your cement is about midway between the two, as I understand, in that respect.

A. Well, I don't remember the exact figures of the one

day strength, but I should say it was about half-way; yes, sir.

Q. Well, where does your cement stand with respect to any other characteristic than tensile strength, as to where it stands in between standard and high early?

A. I think the only difference is in the tensile strength. I don't know of any other difference. The only difference is that it gains its early strength faster. I don't know that the ultimate strength is any better, at all.

Q. Now, I believe you said on direct your company had never initiated a price change, is that correct, that you can remember?

A. Not to my knowledge, no.

26352 Q. Does that go for the Nazareth while you were with it, and the Dexter while you were with it, as well as the Hercules?

A. To my knowledge neither of those companies ever initiated a price change.

Q. In other words, even though your costs went up you never have put the price up, yourself, or initiated an increase in price?

A. We couldn't. We had to meet the prices that we found in the market.

Q. And even if your own company's cost went down, you never took the lead in reducing the price; is that correct?

A. That is quite true.

Mr. Wooden: Now, Your Honor, coupled with the witness' testimony a while ago that the cost varied from 6 to 16 cents and yet the price was the same, and the testimony he has just given to the effect that his prices have no relation to his costs, I submit that that demonstrates the irrelevancy of costs in this record, and I, therefore, move to strike the witness' testimony given yesterday afternoon regarding costs.

Trial Examiner Norwood: I will take the motion under advisement.

Proceed with the examination.

Mr. Wooden: I have some questions that I would like to ask if the motion is denied which I wouldn't ask if
26353 the motion were allowed, but I can postpone that until the latter part of my examination, and it will no doubt be this afternoon.

Trial Examiner Norwood: Well, the trouble is this:

That we have had considerable testimony as to costs. It wouldn't be clear to me that costs,—this testimony, should be struck even in view of what he said.

I feel sure that there is some expert testimony here about the relation of profits to prices and demand.

Mr. Wooden: I don't doubt but that there is some discussion of the relation of those factors, but I don't even recall any discussion of the relation of costs to it except that the witness himself has now confirmed—I don't know whether Dr. Fetter testified to this, but I know it is his position that costs don't determine the price, and the witness has just confirmed it.

Trial Examiner Norwood: The question of costs is involved.

Mr. Wooden: They put to Dr. Fetter, on cross-examination, the cost theory as represented by John Morris Clark and Dr. Fetter didn't dispute that, and that was on cross-examination, and the witness has confirmed Dr. Fetter in his testimony now, that his company's costs have nothing to do with price.

Trial Examiner Norwood: I shall deny the mo-
26354 tion, for the time being.

Mr. Leisure: We tried to go into costs yesterday afternoon. I don't think we got very far. It was objected to.

Trial Examiner Norwood: I think we should try to clarify that and settle it once and for all.

Mr. Wooden: Your Honor, in view of your ruling, I think that you should accept, without the qualification that I attached to it when I offered it in evidence, Commission's Exhibit 2827-A and B, so far as it relates to the Hercules and Nazareth companies with which this witness has been connected.

Mr. Leisure: Why do we spend further time on this now? The Examiner has denied it now with the understanding he wants to look at the record on this. Why don't we wait until we find out what the final ruling is? It may not be necessary to spend this time.

Trial Examiner Norwood: You have an exhibit that was excluded?

Mr. Wooden: It was not offered for the purpose of showing the absolute costs of the various companies, but merely to the issue that the costs of various companies differed from each other.

He has given testimony about certain portions of the cost figures of his company, and if that remains in then
26353 this Exhibit 2827 should be unqualifiedly to meet that particular line of testimony.

Trial Examiner Norwood: What do you have to say?

Mr. Leisure: I don't know what the exhibit is he refers to, and I think the thing that should be done is, as already has been indicated by the Examiner. Let us see the parts of the record Counsel has reference to, and also the exhibits. I don't know what it is when he refers to it by exhibit number. I don't know what he is talking about.

Trial Examiner Norwood: The circumstances surrounding the conditions; I think we should give a little study to this before a final finding.

It is all necessitated, of course, because of this large record.

Mr. Wooden: I want to make the point on the record at the present time. I am doing it while the witness is on the stand so that whatever is done will be done in his presence and before he is discharged.

Trial Examiner Norwood: I shall rule on it before he leaves the stand.

Go ahead.

By Mr. Wooden:

Q. Mr. Brobston, I believe you said you were on the sponsoring committee or steering committee of this C-1?

26356 A. Yes, sir; I am on the sponsoring committee.

Q. And you said there was another man on that committee. What is his name?

A. William H. Kline.

Q. What is his connection?

A. He is the operating manager of the plants of the Penn-Dixie Cement Company.

Q. Now, you were asked on direct whether there was any stock held by the Hercules Company in other companies, and whether any other companies held any stock of the Hercules, I believe, and your answer was "No."

A. That is correct.

Q. Are there any directors of the Hercules Company that are directors in other companies?

A. Yes. I am a director in the Nazareth Company; still.

Q. Is that the only common director of those two companies?

A. That is the only connection anybody connected with the Hercules Company has with any other company.

Q. In other words, you mean there are no other common directors of Hercules with any other company?

A. No. I say no other director has any connection with any other cement company.

Q. Are there some common stockholders between Hercules—in Hercules and in other cement companies?

A. None except myself, that I know of.

26357 Q. I believe you said that in the winter time when the demand was slack you might take a lower price than at other seasons; is that correct?

A. That is correct in this respect: We have recently made prices on South American business which were lower than I would like to take in those sales—it was specified in our bid that those sales would be limited to the period prior to March 1. That was for the purpose of moving cement to help our storage facilities.

Q. Do you mean that sometimes in the winter you made lower prices on domestic deliveries?

A. What I meant was that we might extend our market further so that the mill nets might be lower, on some winter business.

Q. In other words, you used price, there, in that connection, as meaning your mill net.

A. Yes, sir.

Q. And yet I understand your position to be that the mill net is not your price but your delivered price is your price; is that right?

A. I consider our price is our price at destination; yes, sir.

Q. Does your company keep a record of its various mill nets on its various sales?

A. I am not quite clear what you mean by that question, Mr. Wooden.

26358 Q. Do you build up a record of your various mill nets on your various sales in order to get your total net received?

A. You mean our average net for the month or for the year?

Q. Yes.

A. Well, I mean the total net return on all the invoices

for the month as divided by the number of barrels, and that gives the average price for the month.

Q. Do you keep any similar record regarding the total of your delivered prices?

A. You mean what the average is of all our delivered prices?

Q. Yes.

A. I wouldn't know that, at all.

Q. You mean you don't keep any such record?

A. The record could be gotten from our books.

Q. But you don't make it up?

A. No.

Q. But you do make up a record to get your average mill net.

A. Yes; that is the thing that is of interest to me.

Q. And isn't that the thing that, by comparison of your per-barrel cost, determines whether you are making or losing any money?

A. Yes.

Q. You say your delivered price is your price. Why don't you deduct your cost from your delivered price, and the average delivered price in order to find out what your profit is?

26359 A. Would you mind saying that again? There is something I am not clear on, on your question.

Trial Examiner Norwood: Read it.

(Question read.)

A. Why, because I can find that out by seeing what my mill cost is against my mill net.

By Mr. Wooden:

Q. You couldn't ascertain whether you were making a profit or loss by putting your delivered price against your cost, could you?

A. Well, there are other items enter into that.

Q. You couldn't ascertain what your margin was by deducting your cost from your delivered price, could you?

A. I think we could take the total of the bills and figure what the average was, but I never heard of anybody doing it.

Q. That is, to find out what the average delivered price is, but even if we have got the average delivered price could you ascertain your margin by taking the difference between your average delivered price and your average cost?

A. Including the freight in our average cost, we could do it.

Q. In other words, you would have to deduct the freight, wouldn't you; allow for the freight?

A. In figuring the net at the mill the freight is naturally deducted from the delivered price to show what the
26360 net is at the mill, Mr. Wooden.

Q. And the customer pays the freight, and you deduct it from the invoice?

A. Yes, sir.

Q. You never see the amount that is paid for freight by the customer to the railroad, do you? It never passes through your hands.

A. I don't know, personally, but I think, occasionally, freight bills are sent to the office. I wouldn't know about that, Mr. Wooden.

Q. I am talking about as a general rule the amount paid for freight by the customer doesn't pass through your company's hands at all.

A. The bill, you mean?

Q. No, the amount paid.

A. The amount paid, we know exactly. We put the freight on our bill-of-lading, and we know exactly what the amount of freight is going to be.

Q. But the amount paid for freight does not pass through your hands?

A. I don't know what you mean by that at all, Mr. Wooden. We know what the freight is, and if the man sends less money than we knew the delivered price less the freight would be, why, we would know there was something wrong.

Q. Of course. That isn't my question.
26361 The amount paid by the customer for freight is deducted from the invoice, isn't it?

A. When he settles with us, yes.

Q. And he pays the railroad freight?

A. Yes.

Q. And I am simply asking that what he pays the railroad never passes through your hands at all.

A. No. If it is pay to the railroad how could it pass through our hands?

Q. That is all I was asking.

Showing you Commission's Exhibit 1321, for identification, had you seen that during your experience, contact

with the Nazareth Company (handing document to the witness)?

A. In my contact with the Nazareth Company?

Q. In your connection with the Nazareth Company.

A. No, not to my knowledge. The first time I saw this book was when I saw it referred to in this case and I had them get me a copy of it and I read it then.

Q. I am showing you page 18 of this Exhibit 1321, for identification, and ask you whether or not you agree with the statement on that page that the mill net —

Mr. Leisure: Just a moment. I object to quoting from an exhibit not in evidence.

Trial Examiner Norwood: Yes, I think so. You can ask him what his philosophy is with respect to that,
26362 and you may use that exhibit for the purpose of framing your question, but I wouldn't refer to it in the question. It is getting something in the record that hasn't been received.

By Mr. Wooden:

Q. Do you believe that the mill net is the actual price received by the producer?

A. I believe that the producer's price is the price at destination. Our mill net is what we get at the mill.

Q. It is what you receive at the mill, isn't it?

A. That is, our mill net is what we receive at the mill?

Q. Yes.

A. Yes.

Q. Do you say that is the actual price that you receive, or not?

A. No, I say our price is price at destination.

Q. But you testified a moment ago that you didn't receive all of that. You didn't receive the freight part of it.

A. What I said, Mr. Wooden, was, naturally, I didn't get the money that passed through the hands of the railroad. That is what I said.

26363 By Mr. Wooden:

Q. So you don't really receive your delivered price, do you?

A. That is a different question. No, the amount shown on our invoice, we do not actually receive that. That is, there are certain deductions which are made from our price before it is paid to us.

Q. You say, Mr. Brobston, that you got a copy of this

Exhibit 1321, for identification, and read it since it was referred to on your previous appearance.

A. I didn't understand that.

Q. When did you get a copy of this 1321, for identification, and read it?

A. I should say possibly a year, a year and a half ago. I don't remember just when it was.

Q. What was the circumstance under which it came to your attention?

26364 A. I thought I had stated that, Mr. Wooden. I saw it referred to in the testimony here, and I asked them if they had a copy of it on file, and they found it for me.

By Mr. Wooden:

Q. Who found it for you?

A. I don't really know. I guess one of the file clerks. I don't know.

Q. Of the Hercules Company?

A. Oh, yes. It was in the files of the Hercules Company. Naturally, it would be.

Q. Is this Exhibit No. 1321, for identification, a duplicate of the copy was that was found for you by the Hercules Company (handing document to witness)?

A. It looks so to me. As far as I know, it is; yes, sir.

26365 Q. I think you testified you were a close associate and friend of Morris Kind.

A. Yes, I knew him very well, indeed.

Q. Who appears to be the author of this.

A. Yes.

Q. And he was your predecessor in the Hercules Company?

A. Yes.

26366 Trial Examiner Norwood: Did Mr. Kind write that (referring to Exhibit, for identification, 1321)?

The Witness: Mr. Kind, so far as I know, I understand he did.

Trial Examiner Norwood: Do you know that he did?

The Witness: I think that he did. It has his name on it, and, as I say, I found a copy of it among our files there.

26378 By Mr. Wooden:

Q. Mr. Brobston, when you testified about the small volume of sales in Washington, D. C., because of the better service given here by some of your competitors—

A. I think that was the reason.

Q. Yes.

A. We still exerted influence there.

Q. Did you continue to solicit in this market even though you didn't have a large volume?

A. We solicited for some time after our volume dropped. At the present time we spend very little time on it.

Q. During the time that you continued to solicit here, did you make the same delivered price, as the company, or companies, that gave the better service?

A. I believe we did, yes.

Q. What was that company, or companies, that gave the better service here?

A. Well, my knowledge of the market is not very thorough, but I do know that the Lone Star have put up bins there, very large silos, from which they can deliver promptly to trucks; and that there are two private concerns who put up silos and rent those silos to companies who have large contracts in Washington, and they are supplied from those silos.

26382 Q. You get 25 cents a barrel more from customers, at the mill, depending on their location, than you do from some other customer, don't you?

A. We at times get 25 cents a barrel more on cement we ship to one location than we do on cement we ship to another location.

Q. That is what I am asking you. Why do you charge 25 cents a barrel more, at the mill, for one location than you do a customer at some other location?

A. Because when I meet the competition I have to meet it at destination.

In order to get the business to run my mill I have to meet the prices of other mills, which gives me a lower net in some cases at the mill.

Q. In other words, in order to have a delivered price, as you put it, which is competitive with that of your competitors, you have to charge different sums at the mill to different customers located at different destinations. That is right isn't it?

A. We have to absorb part of the price that we think we should get, in order to get enough volume to keep
26383 the mill even reasonably operating.

Q. You really don't want to take different amounts at the mill from different customers at different locations if you could meet the delivered prices of other mills without doing it.

A. If I could get a higher price I would be very glad to get it, but I can't get it if I am to meet the competition; to get the volume I have to have to keep the mill operating, as I said before.

Q. In other words, it is necessary to take different mill nets from other customers in order to make the delivered price as low as that of your competitors; is that right?

A. If I go beyond the territory where my mill price will give me as low or lower a price, I have to take a lower mill net to get the business it is necessary for me to have, to operate the mill.

Q. Isn't the answer to that question "yes"?

26384 A. I will say "yes" to that, Mr. Wooden.

By Mr. Wooden:

Q. You spoke about wanting to be fair to your dealers so that each one would have, as I understand it, no advantage over the other in a given market; is that right?

A. Yes, that is right.

Q. Does the element of fairness to your competitors enter into the situation there?

A. I don't see how that can enter into it. I am trying to keep my dealer in position to compete with the dealers of other companies. It has nothing to do with the policy of competitors.

Q. In other words, the only element of fairness you consider in that connection is the element of fairness as between your dealer-customers and not between the company and your own competitors?

A. I consider, also, the question of fairness to myself. I feel that policy is not only best for the dealers, but for myself. I think I said it had nothing to do with my competitors.

Q. In other words, you disregard any question of fairness to your competitors in the matter?

A. I don't think any question of fairness to my
26385 competitors enters in at all, Mr. Wooden.

Q. That is what I am trying to get you to answer.

26386 Q. Where was the market at the time you sold to French & Company as your distributor?

A. The market was at destination then, just the same as it is now.

Q. You didn't know where the destination was, did you, all the time?

A. Oh, yes, every car we shipped, we shipped it and drew up the bill-of-lading. We know where the French Company was shipping.

Q. But you billed French, didn't you, f.o.b. mill?

A. Yes.

Q. Yet you say the market was not where you billed it f.o.b. mill?

A. What do you mean? The market where the cement was used, Mr. Wooden?

Q. No.

A. No, that was certainly at destination.

Q. Of course, there were consuming markets; everybody knows there were consuming markets.

26387 A. Yes.

Q. But when you sold French & Company f.o.b. mill, weren't you selling them with the mill as the market?

A. We were selling French f.o.b. mill.

Q. Yes.

A. But that was not the market where the cement went.

Q. I see.

Where is the market when you sell to the Federal Government and it takes title at the mill?

26389 A. Just exactly where it is when I sell to anybody else.

By Mr. Wooden:

Q. Well, when you tell us about markets, you mean that is the place where the cement is to be used, don't you?

A. The destination where the cement is to be delivered at the railroad siding.

Q. For use?

A. For use, presumably.

Q. Yes.

A. I don't know what is done then. It may be trucked away from there, but I am not interested beyond the point where it is shipped.

Q. Well, when you refuse to sell f.o.b. mill, you won't permit the market to be at the mill, will you?

A. I can't make the market at the mill. The market is not at the mill, whether I sell there or not; there is no market at my mill.

Q. Even when somebody comes to the mill and wants to buy at the mill, you say there is no market
26390 there?

A. No, sir.

Trial Examiner Norwood: Now, before you recess, I want to say, in regard to this Commission's Exhibit, for identification, 1321, if you will give me the citations I will review the entire record with regard to it, and also see just what this witness has testified about it.

Now, as to those pending motions, I wish you would give considerable thought to whether or not costs are in issue. I want to hear your reasons on that.

Now, cost cannot be an issue for part of the story and not in issue for all the story. So make up your
26394 mind whether or not costs—and that is going to involve costs of labor and every other costs—whether or not costs are in issue.

Mr. Wooden: My mind is already made up, Your Honor, and that is that the cost figures, as to what the costs are, of the various companies, for any particular item, and for their total costs, are not in issue.

The only thing that I would say is,—whether costs vary or not,—that is relevant; but not what the costs are.

26392 Mr. Leisure: Mr. Wooden said he did not consider costs were in issue. I want to know whether he feels the same way about profits.

Mr. Wooden: Yes.

Mr. Leisure: Not in issue?

Mr. Wooden: Not in issue.

26393 Trial Examiner Norwood: No comment, and no inference is going to be drawn from the size of the profits.

Mr. MacIntyre: Size of the profits, losses, or the precise level of costs.

Mr. Leisure: We feel that both costs and profits are in issue.

26395 Q. Mr. Brobston, when you declined to quote f.o.b. mill to the Procurement Division of the Treasury in 1938, you were refusing, were you not, to permit the market to be at the mill, as the Government requested?

A. Would you let me hear that again?

Trial Examiner Norwood: Read it.

(Question read.)

A. There were a number of reasons, Mr. Wooden.

Q. Was that one?

A. It was not.

Q. Weren't you refusing to let the market be at the mill as they wanted it to be?

A. I couldn't let the market be at the mill because the market wasn't at the mill.

Q. Even though they wanted to buy at the mill?

A. Mr. Wooden, the Government, to us, is a very unimportant customer, and I had no reason to let the
26396 Government dictate to me how I should run my business. There were a great many reasons why I would have refused to quote on that particular condition. One of them was—

Trial Examiner Norwood: He isn't asking you about that. He is asking you about the market aspect of the situation.

By Mr. Wooden:

Q. Do you think a buyer of any kind has any right to tell the seller what kind of a business deal he wants, or conditions on which he wants to buy? Do you think that is not right for any buyer to do that?

A. I think any buyer may try to do it, but in the case of a very unimportant buyer who tried to change my entire method of doing business, if it hadn't been the Government I would have considered it sheer impertinence.

Q. Why did that involve changing your entire method of doing business? Couldn't you still have continued to sell delivered to your other customers?

A. I treat all customers alike, Mr. Wooden.

Q. You treat them all alike even though they might want to be treated different; is that right?

A. I don't ask anybody to treat me different; no, sir; not that I know of.

Q. Do I understand in selling railroads that in selling to the railroad whose line serves your property,
26397 that you sell them f.o.b. at the plant?

A. No, sir; we sell them f.o.b. their track.

Q. Which is at your plant?

A. In some cases, and in others not.

26412 Q. Now, referring to this distribution in years

gone by through French & Company; They were your sole distributors?

A. Excuse me. I didn't get that.

Q. Were French & Company your sole distributors in those old days?

A. They were our sole sales agents for 15 years. They had distributors under them.

Q. Were they distributors dealers or were they jobbers or sub-jobbers, or what?

A. You might say they were wholesalers. They were firms who had salesmen of their own and sold to the dealers in the territory in which they operated.

26427 Q. Have you discussed at meetings of competitors what rule should be applied in determining who was to be recognized as a dealer?

A. I don't recall having discussed it at any formal meeting. I probably have discussed it with individual competitors many times. That question is apt to come up any time.

26441 Q. You say the Institute never had anything to do with your method of quoting prices?

A. The Institute has nothing whatever to do with our method of quoting prices.

26442 Q. It never had anything to do with the question of whether you will quote delivered and f.o.b. mill?

A. They have not.

Q. The Institute never had anything to do with your form of contract or the prevention of diversions in transit?

A. They have not.

(The foregoing testimony beginning with "You say the Institute never had" was adopted by Georgia, Oregon, Giant, Utah, Standard and Vulcanite.)

26446 Q. You don't mean to say that each competitor has the same advantage with reference to location of plant, and the proximity to the market, do you, that every other competitor has?

A. There are some plants that are in closer proximity to some markets than others.

Q. So, some competitors do have advantages over others in those respects?

A. I wouldn't say that they have any sales advantage, as long as I intend to meet their competition at the point of delivery.

26450 Q. Did you testify on direct examination that The Cement Institute had never participated in the matter of selling methods?

A. I don't know that I testified to anything of the kind. I said that The Cement Institute had not influenced my selling methods.

Q. You don't mean to say that they had never participated in such matters?

A. Not to my knowledge, Mr. Wooden.

26452 Q. Do you mean to say that the purpose of tying up dealers on specific job contracts, to a particular specified amount of cement, has had no connection with the question of price advances, or the maintenance of prices?

26453 A. No, sir; it has had nothing whatever to do with it, in my opinion. The reason for holding a man down to purchasing amounts that would really be used on a job is to prevent him from perpetrating a fraud on me by getting cement that is not to be used on that job at a price below my current market price.

26454 Q. The other element being the effect of the dealer having larger quantities than that specified in a specific job contract, and the effect of that amount in the dealers' possession upon the manufacturers' market price?

A. No, I don't think it would affect the manufacturer's market price. It would only be a loss to me.

Q. Hadn't you had such cement in the hands of dealers sold at less than the advance that the manufacturers put into effect?

A. If any cement is in the hands of the dealer at a lower price, that is perfectly all right. He has a right to do with that as he pleases. What I object to is holding cement in my bins for the dealer in a case where he will use it to compete with me at the new price which
26455 I put in. I have no objection to selling a hundred thousand barrels to a dealer if he will take it within 15 days and put it in his warehouse, or wherever he wants.

Q. And compete with you at the new price, or even less than the new price?

A. If he takes it and stores it he is at perfect liberty to use it as he pleases.

Q. I am talking about the prior answer you made. You

said you would object to the dealer competing with you at the new price.

A. No. I said I objected to holding cement in my warehouse with which the dealer could compete with me at the new price.

Q. Or he might even do it at less than the new price.

A. Yes, he might; if I had made a speculative contract with him. That is why I say it is a fraud on me to make a speculative contract.

Q. In other words, any benefit from the speculative increase, you want that, rather than to have the dealers have it?

A. A speculative contract didn't give you any increase. The cement doesn't move unless the business is there and I would get it anyhow. The speculative contract doesn't increase the sales one barrel.

Q. Not the volume, no, but you may get a higher price as a result of an advance in the market, might you not?

26456 A. If the market advances I hope to get a higher price, if that is what you mean.

Q. Did you say on direct examination, Mr. Brobston, that Hercules Company had received no information from competitors as to changes in price?

A. I said they had received no information from competitors prior to any change in the price.

Q. To what extent did it receive information from competitors as to changes in price, simultaneously with the change?

A. I don't receive any, simultaneously. I have to find out whether there is a change, after it has been made.

26462 Washington, D. C.,
November 3, 1939.

26463 JOSEPH BROBSTON thereupon resumed the stand and testified further as follows:

Cross-Examination (Continued) by Mr. Wooden.

Q. Mr. Brobston, the last thing yesterday, on page 26460, I asked you whether you could say whether your billing department—what they used in making out freight rates on the invoices. You said you couldn't tell me.

Then I asked you:

"Q. You do not know whether they use the Institute freight rate books or the tariff?"

Then you answered:

"A. I know they use the freight rate books right along."

26464 Mr. Leisure: What page is that, Mr. Wooden?

Mr. Wooden: 26460.

Mr. Seeley: Excuse me a moment. That is not my recollection of what the witness said. I want to check it.

Mr. Wooden: Lines 11 to 16.

By Mr. Wooden:

Q. I would like to clear up that point, Mr. Brobston. How do you reconcile your statement that you couldn't tell what the billing department used in making the freight rate on the invoices, and the statement that you knew they used the freight rate books right along?

Mr. Leisure: May the witness look at his testimony (handing copy of transcript to witness)?

A. I said here:

"I don't think the shipping clerk has freight rate books at all. The shipping clerk is at Hercules and the invoices are sent out from Philadelphia.

"Q. Who makes out the invoices?

"A. The billing department.

"Q. The billing department?

"A. Yes.

"Q. Can you state what they use in making the freight rate on the invoices?

26465 "A. I cannot.

"Q. You do not know whether they use the Institute freight rate books or the tariffs?"

What I meant, there, is I know they have the freight rate books right here in the office. Whether it is the billing department or the sales department that has those books, I couldn't tell you. Which stenographer handled them, I couldn't tell you.

Q. In other words, your testimony you don't know the billing department,—what they use in making out their invoices, still stands?

A. Oh, yes. The point is that while I know they have the books there, what the billing department uses in punching out their invoices, I don't know.

Q. And do you know whether or not your billing department uses the railroad tariffs?

A. You mean the bookkeeping department?

Q. No, the billing department.

A. The billing department—well, the billing is done in the bookkeeping department.

Q. All right, then.

A. I don't think they use the tariffs at all. I think the sales department gives them the information.

Q. Do you know whether or not, in making out the bills and invoices, they are checked against the railroad tariffs?

26466 A. I know that the shipping is checked against the tariffs. I know that is done at the mill.

Q. I am talking about the billing. Is the billing checked against the railroad tariffs?

A. The correct freight rate is ascertained before the billing is made. That is as far as I ca. tell you, Mr. Wooden.

Q. Is the billing, the freight rate that goes on the billing, obtained from the railroad tariffs?

A. Yes.

26467 Q. You testified that the cost of loading cement to trucks was slightly higher than loading for delivery by car. Can you say why you didn't mention any such difference in your letter to Dr. Burns, that is in evidence as Commission's Exhibit 971-9-A, 9-B, and 9-C?

The Witness: Will you repeat that question?

26468 Trial Examiner Norwood: Read it.

(Question read.)

A. Probably I didn't think it was important enough to mention, Mr. Wooden.

By Mr. Wooden:

Q. Do you say that the cost of transportation by truck on cement is not cheaper than the cost of transportation by rail?

A. I can't tell you that, from my own knowledge, but the records of the Hercules Trucking Company show they lost a great deal of money trying to ship at the rail rates.

Q. They were running a company, were they not?

A. The Hercules Trucking Company was a subsidiary of the Hercules Cement Company.

26484 Q. Can you name any years since you have been with Hercules where the percentage of the total shipments in the district by Hercules was greater than it had been the preceding year?

A. Oh, yes, I can give you that, without any trouble: When I came there, I think the first years, 1932 and 1933, we only shipped about 2½ percent.

I have worked that up to 3 percent and I hope to work it up more. We are shipping a larger percentage than when I came to the Hercules Company.

Q. That was not during 1936, 1937, and 1938, was it?

A. We shipped a larger percentage in 1936, 1937, and 1938, than we did in 1932 and 1933; yes, sir.

26485 Q. You say, I believe, that you are not interested in the volume that others get. You are interested in the proportion of the total that others get, aren't you?

A. I am interested in the proportion of the total that I get, Mr. Wooden. It doesn't make a bit of difference to me how the balance is distributed in the district; not a bit.

Q. I didn't say how it was distributed, but you are interested, by the same token, as to how much the others get, collectively, aren't you?

A. No. Collectively,—if you take the Bureau of Mines' statistics, I am interested in increasing the percentage of what I get, and I am using every effort to do it. If I get an increase I would say, unquestionably, the balance in the district get a little lower percentage.

Q. You are not interested in what percentage the total individual companies, or mills, get in, in the slightest?

A. Not in the slightest degree. If I get mine, that is all I am interested in.

Q. And yet you get that information from Mr. Mallory?

A. It comes in on the sheet he sends, but I assure you I never figure out what any other company but my own gets.

Q. Isn't it more a matter of interest to you as to what some companies are doing than others?

A. No, sir. I don't care. There may be other people in the industry that do care, but, I don't. I am interested only in getting all the business I can get.

26487 Q. You don't consider that some of your competitors are more active competitors than others?

A. Oh, yes. In every business some competitors are more active than others.

Q. Then, aren't you interested in what those more active competitors are doing?

A. No, Mr. Wooden. I am checking my sales department against the results of what Hercules has got in the past, and I want them to do better than we did in the past, or I am going to find out why.

26505 Q. Mr. Brobston, do I understand in July, 1938, the price was increased in New York and Boston at the same time that it was reduced in Philadelphia and Reading; is that correct?

A. That is correct; yes, sir.

Q. Can you explain what caused that movement of prices downward in Philadelphia and Reading at the same time the price moved upward in New York and Boston?

A. My understanding of it is, Mr. Wooden, that that was due to the fact that the Allentown Company had put in a base price at their Evansville and Valley Forge mills, and that they quoted a uniform price to all 26506 districts from those mills. That is my understanding of it.

Q. And is that what made the price in Philadelphia and Reading?

A. The price in Philadelphia and Reading are now governed by the prices made by Allentown.

Q. Did Allentown take the lead in moving the price up in New York and down in Philadelphia; is that right?

A. My understanding of it is that they put in a base at their two mills and based their prices in Boston, New York, Philadelphia, and Reading, all on the new basis that they had put in at their mill.

Trial Examiner Norwood: That is Alpha, is it?

The Witness: No, sir; Allentown.

Trial Examiner Norwood: Allentown Portland Cement Company?

The Witness: Allentown Portland Cement Company with a mill at Valley Forge and a mill at Evansville, Pa.

By Mr. Wooden:

26507 Q. Mr. Brobston, I am showing you papers marked for identification as Commission's Exhibits 3233-A, B, and C, being portions of the transcript of record in the Supreme Court in the Old Cement Manufacturers Protective Association case, and appearing on pages 473 and 474 of Volume 1 of that printed record.

You are quoted there as giving certain statements, in Commission's Exhibits 3233-B and C, for identification—

26508 Mr. Leisure: I object to the exhibits that are in the other case. I don't think we ought to get into that.

Trial Examiner Norwood: You may ask him if he made certain statements. The question of enlarging those will come up later.

By Mr. Wooden:

Q. Did you make the statements that are there attributed to you?

A. If they appear on the record, I presume that I did.

Q. Now, I would like to ask you whether or not in the discussion that you participated in there, what you meant by the "average price" that you referred to?

26509 A. Well, Mr. Wooden, the trouble is that this is only an extract from the discussion. I don't know what it led up to or what it means. I can't tell you what I meant because I don't know what the discussion was about.

There are a lot of stars and there is nothing to show me. I read this (indicating) to find out. That doesn't seem to bear on this (indicating). I don't know what they 26510 were discussing at all.

By Mr. Wooden:

Q. I will ask you whether or not this discussion of average price there, if you weren't referring to the average mill net?

Trial Examiner Norwood: And what he meant by them.

Mr. Leisure: Yes. —but this indirect method of refer-

ring to an exhibit in another case, and what he meant by it, I object to that question.

Trial Examiner Norwood: Objection overruled.

A. Well, Mr. Wooden, as I say, if I had the full context of this thing I could probably answer, and I have no doubt I took part in this discussion as it is shown here, but it says here, "average price"—

Mr. Leisure: I object to his reading the exhibit.

Trial Examiner Norwood: Let him finish. Objection overruled.

A. It says here, "the average price of the preceding month," and that is not what I said, that is what the president said.

By Mr. Wooden:

26511 Q. Yes, but you talked about it, too.

A. What do you want me to say? What I meant by average price for the preceding months?

Q. I asked you if your reference to the average price there didn't mean the average mill net.

Mr. Leisure: Same objection to that question.

Trial Examiner Norwood: Objection overruled.

A. I should say that it probably referred to the average mill net for one month.

By Mr. Wooden:

Q. All right.

A. The context is such that I can't be sure exactly what it does mean. The whole discussion isn't there.

Mr. Wooden: Now, Your Honor, I offer this Exhibit numbered 3233-A, B, and C, for identification, in impeachment of the witness' testimony to the effect that the delivered price is the price.

Trial Examiner Norwood: Well, he has said, he has already admitted that he used those words, and he has told you that it meant mill net, so you don't have to put that exhibit in to prove that any more. If this testimony is inconsistent with his previous testimony, it is all in the record already.

Mr. Wooden: But it isn't complete as to just what he is talking about.

26512 Trial Examiner Norwood: You can make it complete by asking him further questions.

Mr. Wooden: All right.

By Mr. Wooden:

Q. Well, Mr. Brobston, will you agree, as I understand it, that in discussions with your competitors at a meeting in April, 1916, that you discussed with them the reporting of average prices and mean, thereby, that you discussed with them the reporting of average mill nets?

A. Well, this is at a regular meeting of the Cement Manufacturers Protective Association—

A. This meeting was held in 1916.

The Witness: Your Honor, it doesn't refresh my memory a bit. I can see what was said here and I presume I said it, but I don't know even what the discussion was. What I said about average—

Mr. Wooden: If his recollection isn't refreshed, isn't the document itself admissible?

Trial Examiner Norwood: I think so.

Mr. Leisure: What document? There is nothing
26513 appearing on the record yet what it is, Mr. Wooden, that you are trying to offer, by saying "this document."

Trial Examiner Norwood: We are up to that question now.

Mr. Wooden: I make the offer, then, of Commission's Exhibit 3233-A, B, C, for identification, which is as I described it before.

26516 (COM. EXS. 3233-A, 3233-B, and 3233-C were offered and received in evidence.)

26517 By Mr. Wooden:

Q. Mr. Brobston, do you say that you have never participated in meetings with competitors at which you discussed with them the question of the definition of a dealer, or what parties should be recognized as dealers?

A. I don't remember of such a discussion.

26519 Q. Now, look at the pages marked 3234-B and C. Do they refresh your recollection as to your participation in a discussion regarding the subject of uniform quotation?

A. I say I don't remember anything about this meeting at all. There were a number of meetings of the Cement Manufacturers Protective Association, but, as I say, it was 23 years ago, and I don't recall anything about that meeting at all.

Mr. Wooden: Then, Your Honor, in view of the wit-

ness' inability to remember, I offer Commission's Exhibit 3234-A to E, inclusive, for identification, in evidence.

Trial Examiner Norwood: Now, just what is that?

Mr. Wooden: These are portions of the minutes of the sales manager's branch of the Cement Manu-
26520 facturers' Protective Association, a meeting held on March 20, 1916, the minutes of which are in the transcript of record before referred to, and which show the witness' presence at a discussion of the subjects to which I directed his attention.

26523 Mr. Wooden: I say that a number of very broad questions of that sort were asked the witness, and his testimony uniformly was that there was no agreement with competitors on competitive subjects or policies. And when you get over into the other portions of the proffer it relates, of course, to a different subject than that of the bin charge, and relates to the subject of recognizing dealers and what legitimate dealers are.

Mr. Seeley (Interposing): This—

Mr. Wooden (Resuming): The witness even made motions at the meeting regarding the subject of reporting bin charges.

Mr. Leisure: It does not dispute a single word that the witness has said here in his testimony; not one single thing.

Mr. Seeley: Your Honor please, what the Cement Manufacturers' Protective Association did or considered in connection with those bin costs, and some of its
26524 members, has no relevancy to this matter at all.

Trial Examiner Norwood: Well, it is merely introduced here to contradict the witness.

(COM. EXS. 3234-A to 3234-E inclusive, were offered and received in evidence.)

26525 By Mr. Wooden:

Q. Mr. Brobston, do you know who Mr. Israel was that appears in these papers that I showed you (handing document to witness?

A. My recollection is that Mr. Israel was someone connected with the Coplay Cement Company.

26526 Q. Do you know who Mr. Cover was?

Mr. Leisure: I object to this entire line of testimony, it having to do with the old case. Those issues were determined once, and I object to going into them again.

Trial Examiner Norwood: The objection is overruled.

By Mr. Wooden:

Q. Do you know who Mr. Cover was?

A. Yes, Mr. Cover was president of a company down in Hagerstown, Md., which is now in the North American Cement Company.

Q. Do you know who Mr. Gilkyson was?

A. I don't remember Gilkyson. This has been a long while, you know, Mr. Wooden.

Q. Do you know who Mr. Erdell was?

A. Mr. Erdell was the president of the Penn-Allen Cement Company.

Q. Is that part of the Penn-Dixie Cement Company now?

A. Yes.

Q. Do you know who Mr. Scott was?

A. Scott?

Q. Yes.

A. No, I don't think that that's the Scott of the Keystone even. I don't remember who that was.

Q. Was there a Mr. Scott of the Tidewater Company?

A. There may have been. I don't know much 26527 about the Tidewater.

Q. Who was Mr. Swett?

A. Mr. Swett.—he was in the Lehigh Company,—Mr. Swett.

Q. Do you say, Mr. Brobston, that at no time in the experience you have had in the cement industry have companies you were affiliated with entered into any agreement or understanding with competitors as to the terms of sale and discounts?

A. I would say that's true, Mr. Wooden.

Mr. Leisure (Interposing): Before we go on, may I call to the Examiner's attention here the thing I tried to find a moment ago?

Trial Examiner Norwood: Yes.

Mr. Leisure (Referring to official record of November 2, 1939): Mr. Wooden is offering certain testimony here on the theory that it disputes the witness' testimony, and I have made the statement to the Examiner that rather than dispute it, that it is exactly the same as his testimony today.

I want to call the Examiner's attention to page 26341

where he asked this question, and made the following answer:

"Q. Do you say that at no meetings that you have attended has there been an effort to arrive at a meeting of the minds on such matters as terms and conditions of sale?

26528 "A. Oh, I should say that terms and conditions of sale have been discussed very often."

Now, that is the purport of one of the offers which Mr. Wooden has made.

Now, as to the other, that has to do with dealers, he offered here an excerpt from the old record where there was a discussion as to dealers at a meeting on the theory that it conflicts with the witness' present testimony.

On page 26342, the witness was asked this question:

"Q. Do you say there has never been any attempt or effort at any meeting attended by you to discuss and determine the question of what constituted a legitimate dealer?

"A. It may have been discussed. I certainly don't know of any meeting where it was determined, at which I was present."

All on earth the exhibit which Mr. Wooden is offering out of the old case is, it shows it was discussed—

Mr. Wooden (Interposing): No.

Trial Examiner Norwood: Well, I think—

Mr. Wooden: Your Honor—

Mr. Leisure (Continuing): So his testimony is the same each time.

Mr. Wooden: Your Honor, on page 26060, the

26529 witness testified on direct examination that he had had no contact with competitors that influenced his action as regards the classification of business. That is a pretty broad sweeping statement.

Mr. Leisure: That is all right.

Trial Examiner Norwood: I think that I shall let this ruling stand on this.

Go ahead.

Mr. Wooden: What was the last question?

(Last question and answer read by Reporter.)

By Mr. Wooden:

Q. What is true, Mr. Brobston?

A. That we made no agreement with competitors.

Q. Yes. All right.

A. To follow practices.

Q. Do you say that at no time in your connection with your various companies that you have been connected with have they entered into any agreement or understanding with regard to the question of bag returns or allowances on bags?

A. Bag returns and allowances on bags have been discussed at many meetings at which I have been present. I know of no understanding or agreement that was followed on the subject.

Q. Do you say that at no time have any of the companies that you were connected with reached a meeting of the minds with its competitors as to what allow-
26530 ances—how much of an allowance—should be made for bags returned?

A. I don't know exactly what you mean by meeting of minds, Mr. Wooden. If you mean that they have come to a conclusion that certain practices were satisfactory to them, I presume that that is so. As a matter of fact, the question of bags was discussed as far back as 1902, as I remember. There were various changes which the companies which I was connected with met and followed.

Q. Do you say that at no time that you were connected with the companies you have testified about being connected with, you had any part in or participated in meetings which recommended that all prices be delivered?

A. I don't remember any such meeting, Mr. Wooden, at all.

Q. Do you say that none of those companies participated in meetings at which it was recommended that the freight charges be paid by the purchaser?

A. I don't remember. There have been a lot of discussions, and I probably can't remember all of them. I certainly know that we made no agreement with anybody on that point.

Q. Do you say that none of the companies that you were connected with participated in any meeting at which standard specifications were urged as a means of getting uniform prices?

A. I never participated in any meetings in which the uniform specification adoption was urged as a
26531 method for maintaining prices. I have participated in many meetings where the question of uniform

specifications came up and was fully discussed, but the question of whether that would bear on the question of uniform price was not discussed at those meetings.

Q. It does have some bearing upon uniform price, does it not?

A. It probably does.

Redirect Examination by Mr. Leisure:

Q. Mr. Brobston, Mr. Wooden asked you if you ever met the price of foreign cement, and you said "No," you had not. Why not, Mr. Brobston?

A. The prices that were reported to us on foreign cement were so low that the mill net to us would have been too low for us to want to engage—to get business at that price.

26534 Washington, D. C.,
November 8, 1939.

26545 (COM. EX. 1321, was offered and received in evidence.)

JOHN C. BOWEN, called as a witness on behalf of the respondents, being first duly sworn, testified as follows:

Direct Examination By Mr. Leisure.

26547 I am associated with Lehigh which is incorpo-
26548 rated in the State of Pennsylvania and has its principal offices at Allentown, Pennsylvania. Lehigh was organized in November, 1897, and the present company is the same company that was then organized. I am vice-president and assistant eastern sales manager of Lehigh and have been associated with that company since 1911. During that period of time, I worked in various clerical capacities; I was made assistant to the vice-president about 1928 and was elected vice-president in 1931. With respect to my duties as vice-president and eastern sales manager, the work of our eastern sales office

is under my direction and I have various other special duties assigned to me by the president of the company. As vice-president I participate as one of the executives of the company. The various policies of the company are decided after consultation between its executives
26549 of whom I am one. The other executives are Mr. Joseph Young, president, Mr. Rader and Mr. Sweet, vice-presidents, and in matters involving operations, Mr. Baer is our vice-president and general manager in charge of production.

Lehigh is affiliated with Great Lakes, which operates a cement plant at Buffalo, N. Y. and a clinker grinding plant at Cleveland, Ohio. Lehigh owns a trifle more than 50 per cent of the stock of Great Lakes and there is an arrangement whereby Lehigh markets all the cement produced by Great Lakes. That situation has obtained since the plant (of Great Lakes) began operating in the early part of 1937. Lehigh participates actively in the management of the manufacturing operations of Great Lakes only to the extent that Mr. Young and myself are
26550 directors of Great Lakes and Mr. Baer is one of the vice-presidents of Great Lakes.

Q. In what portion of the United States does the Lehigh Manufacturing Company sell, Mr. Bowen?

A. Roughly, we market our products in all of the United States east of the Rocky Mountains, except the State of Michigan, and portions of the States of Texas and New Mexico.

Q. Do you sell in any western territory?

A. In addition to that, I might say that from our plant at Metaline Falls, Wash., we also sell in the greater part of the State of Washington, and in portions of the States of Montana, to some slight extent in Idaho and Oregon.

Q. I think you told us your principal offices are in Allentown, Pa. Do you maintain offices anywhere else?

A. Yes, we maintain a number of sales offices, numbers approximately twelve, and they are located in Boston, New York, Philadelphia, Baltimore, Richmond, Birmingham, Buffalo, Pittsburgh, Chicago, Kansas City, Minneapolis, and Spokane, Wash.

Q. Do you sell cement all over the State of Texas?

A. No, we sell in only a comparatively small part of the State of Texas.

Q. Why don't you sell all over the State?

A. Because the location of our plants is such that we cannot compete in the rest of the State.

26551 Q. Well, how far do you go into Texas?

A. Only—into principaly what is called the Panhandle section of Texas, and beyond that we find that our freight rates, and the prices quoted by our competitors, is such that we cannot possibly sell our product.

Q. Do you ship into Michigan?

A. Not at all.

Q. Why don't you ship into Michigan?

A. For the same reason as we cannot ship far into Texas, the location of our plants and the prices quoted at Michigan are such that we cannot compete.

Q. What is your nearest mill, Mr. Bowen, to Michigan?

A. Our nearest mill is at Oglesby, Ill.

Q. How far would you say it is from Michigan?

A. Roughly, about 400 miles.

Q. Do you ever make shipments to the extent of three and four hundred miles from your mill?

A. Yes, we do in some cases. There are localities in which competing cement plants are located further apart, and where that situation exists we are able to ship for longer distances.

Q. Is that occasional or regular practice, Mr. Bowen?

A. In the territories where that situation exists, it is our regular practice.

Q. Well, what would you say the average limit of your shipments is from your various mills?

26552 A. I would say the average would figure approximately 250 miles in and around our plants.

Q. There has been considerable testimony here as to salesmen's activities with respect to other companies. Does your company actively solicit business by salesmen throughout all of your sales territory which you have described to us?

A. Yes, in the territory that I have described to you we have our own sales organization, and have salesmen covering the entire territory.

Q. How many salesmen do you have?

A. Approximately 150.

Lehigh has in operation at the present time plants at 12 locations, exclusive of the Great Lakes plant at Buffalo. There are three Lehigh plants in the Lehigh Valley Dis-

trict, known as the Bureau of Mines District No. 1,
26555 at Sandt's Eddy, Ormrod and Fogelsville, Pa.; one at Alsen, N. Y. in Bureau of Mines District No. 2; one at New Castle, Pa., in Bureau of Mines District
26556 No. 3; a fourth plant in District No. 1 at Union Bridge, Ind.; two in District No. 5 at Mitchell, Ind. and Oglesby, Ill.; two in District No. 6 at Fordwick, Va. and Boyles, Ala.; one in District 7 at Mason City, Iowa; one in District 8 at Iola, Kansas and one in District 11 at Metaline Falls, Wash.

The capacity of the Ormrod plant is approximately 1,600,000 barrels; that of the Fogelsville plant is two million barrels; Sandt's Eddy, 2 million barrels; Alsen,
26557 one million barrels; Union Bridge, a million, four hundred thousand, Fordwick, one million, one hundred thousand; Birmingham, two million; New Castle, one million six hundred—approximately eight hundred fifty to eight hundred seventy-five thousand; Mitchell, two million; Oglesby, two million; Mason City, one million, eight hundred thousand; Iola, one million four hundred thousand; Metaline Falls, a comparatively small plant, about 650,000. The Buffalo plant has a capacity of approximately 3,000,000 barrels. These capacity fig-
26558 ures are the figures which Lehigh's operating department and ourselves believe that these plants can make. Lehigh began shipping cement in 1898.

26562 By Mr. Leisure:

Q. Mr. Bowen, as part of your duties today, it is necessary for you to, as one of the executives, to know what your early methods of manufacturing and distributing cement were up to the present time?

A. Yes, sir.

Q. As part of that knowledge, can you tell me, just briefly, what your methods were from the start as a company, down to today?

A. When the Lehigh Company began selling cement in 1898, it sold entirely to distributors; that is, it sold to a small number of customers, each of whom in turn granted the sole privilege of distributing the products in the territories allotted to them.

Q. And what was done when it first started? You said it started manufacturing in 1898?

A. Started in 1898.

26563 When they first started this little plant, there was a very great and growing demand for cement, and the operation of the first plant was very successful. Within a very short time the earnings justified them in beginning the construction of a second plant. The Lehigh Company was very fortunate in coming into the production at a time when the demand for cement was on the upgrade. It was a time when the use of cement was
26564 increasing rapidly, and when cement produced in the United States was rapidly being accepted, and [as] being equal or superior in quality to the imported cement which had previously been the accepted standard of quality, and the people in charge of the Lehigh Company, being conservative, small town people, put the earnings back into the business.

Early in the history of the company Colonel Trexler and Mr. Young, through foresight and confidence, decided that cement of excellent quality could be manufactured in the middle-western territory where plants previously established in that territory were generally considered to be somewhat of inferior quality. They established plants in the middle-western territory. A plant at Mitchell, In-
26565 diana, went into operation in 1902. Using these two plants as a basis of operation, they built up the sales territory, and a sale of the product in almost the entire territory which the Lehigh Company now covers. By 1911 they had built up the sale of cement in that entire territory, and had a very strong sales position. The later history of the company with respect to new plants consists very largely of the construction or purchase of new plants in order to hold that sales position in that territory, against the competition of new plants that were from time to time built in the area.

The Lehigh plant at Metaline Falls stands in a little different position, because the territory it covers is isolated from the rest of Lehigh's sales territory. Colonel Trexler had a lot of lumber interests in the Northwest, and in connection with these found a small water power in the State of Washington, and decided to build a cement plant there, and that plant was built in 1911 as the Inland Portland Cement Company, which operated as a separate company until about 1914, when it was taken over by Lehigh in order that it might be operated to better effect as a part of the Lehigh organization. The plants of the

Lehigh Company were acquired in about this order: the first plant was at Ormrod, Pennsylvania; the sec-
26566 ond plant was built in 1906—.

Trial Examiner Norwood: Now, just how is that important here at all, how they acquired these mills?

Mr. Leisure: Why, we have been charged here with conspiring and building plants for the purpose of controlling markets.

I am showing what the natural growth of this company was as contradicting those charges.

Trial Examiner Norwood: Well, couldn't all of this thing have been done for the purpose of controlling the markets?

Mr. Leisure: Oh, yes, there isn't anything that we could say that biased minds would not say we did that for that purpose; but I hope we will get into an atmosphere some time where that won't be true, and I think this kind of evidence is convincing as to the way industries all over this country have grown up, independently.

Trial Examiner Norwood: Is there anything about this that throws light on the question you mention there?

Mr. Leisure: The growth of this company contradicts this charge, and the testimony of their economic experts, that we did these things, and acquired plants as the result of conspiracy,—that we bought out little plants and did these things for the purpose of monopolizing the
26567 market. The whole thing refutes it, shows a natural growth.

Mr. Wooden: I am not aware at this moment of any evidence that we have offered that tends to prove what Mr. Leisure just said.

Mr. Leisure: Well, Mr. Wooden has forgotten the record, then.

Mr. Wooden: I don't think so.

Mr. Leisure: It is a rather long record, but it is there.

Trial Examiner Norwood: Where? I don't remember anything like that.

Mr. Leisure: I cannot think of any charge—

Trial Examiner Norwood: We are taking a week for a witness here, and I am going to ask Counsel to get to the point.

Mr. Leisure: Under a charge of conspiracy, I cannot think of anything more material and relevant than to show

the circumstances under which a certain plant was acquired and why they acquired it.

Trial Examiner Norwood: It has nothing to do with this.

Mr. Leisure: If we cannot show that, then we are deprived of meeting the charge of conspiracy at all.

Trial Examiner Norwood: It has nothing to do with this case.

26568 Mr. Brick: Your Honor please, it has considerable to do, and I think Your Honor will appreciate it in the light of the various market conditions which might have existed at the time new mills were either acquired or constructed.

Trial Examiner Norwood: Give us some evidence about your market conditions.

Mr. Brick: If Your Honor would permit the witness to answer the question, I think you would have it in a hurry.

Trial Examiner Norwood: No, I do not think so.

Mr. Brick: I don't think we have a right to assume what the evidence is going to be before it comes out.

Trial Examiner Norwood: Yes.

Mr. Jacques: Your Honor please, on this point if the proof shows that a mill was erected at a certain place, or a mill acquired at a certain place, in order to reach a certain market, it seems to me that that has a very direct and relevant bearing on the question of competition, and on the question of whether that mill was erected as a part of a conspiracy or combination with others.

Trial Examiner Norwood: There is no charge that I can recall, and, if there is, I wish you would read it to me, that these companies erected mills as the result
26569 of a conspiracy, and, if there were a charge like that, there is no evidence to that effect.

Mr. Leisure: Well, the charge is—

Trial Examiner Norwood: And you are not called on to disprove any such proposition as that.

Mr. Leisure: The charge, and the proof, is to the effect that they maintained these methods of marketing, and these plants, for that purpose, in certain localities, for monopolizing certain markets.

Trial Examiner Norwood: Whereabouts? In the complaint?

Mr. Wooden: Your Honor—

Trial Examiner Norwood: Please cite it.

Mr. Wooden: Your Honor, I don't think that is an accurate statement at all. Mr. Leisure comes up to the edge of the point, but he does not get squarely on it. The only evidence that I can recall that remotely resembles what Mr. Leisure says is some evidence that basing points were established at certain mills.

Trial Examiner Norwood: Yes.

Mr. Wooden: For the purpose of controlling the market.

Trial Examiner Norwood: Yes.

Mr. Wooden: Not that the mills, themselves, were so established.

26570 Mr. Leisure: Could you have a basing point without having a mill there?

Mr. MacIntyre: Oh, yes, we have such things.

Mr. Leisure: I cannot talk about a basing point in a mill without first showing that we had a mill there.

Mr. Wooden: Well, you had basing points at places where there were no mills.

Trial Examiner Norwood: I think so.

Mr. Leisure: I have got to show what there was there.

26574 The original mill of Lehigh is no longer in operation. It was entirely obsolete and was abandoned in 1930. It became obsolete several years before and we decided that it would cost entirely too much money to rehabilitate it. Inasmuch as its capacity had been
26575 supplemented by new plants which we had built in that area, we decided to abandon it and charge it off. Lehigh's West Coplay plant, the second plant which the company built, also was abandoned and charged off as obsolete in the early 30's. Lehigh had a total of 3 plants at Ormrod, the first of which has been abandoned, and at the present time, we are operating only the second. The third has not been operated for some years past for several reasons, lack of demand and the fact that the available supply of stone at that location is being reduced to a point that we prefer to operate other plants. At Mitchell, Indiana, Lehigh has had 2 plants, the first of which has been abandoned because it also became obsolete to a point that its rehabilitation would have required undue expenditure of money; also because of the construction of new plants both by Lehigh and other companies in territories originally served by Mitchell which would have reduced greatly

the market territory to which plants at Mitchell can
26576 ship. At the time Lehigh built its first plant at Mitchell, we were able not only to sell the complete output of that plant in the middle-western territory, but continued to ship a large volume of cement into that territory from our Lehigh Valley mills. That led to the construction of the second plant at Mitchell in 1906. At that time we had not been able to supply the demand for Mitchell. It was good business for Lehigh to build the second plant at Mitchell and enjoy the advantages of that location. Lehigh's second Mitchell plant has been maintained constantly and partially reconstructed, and is in very excellent operating condition today. Shortly
26577 after Lehigh started operation at Mitchell, because the demand of the Middle-Western territory was so great, it seized the opportunity to purchase a small
26578 plant at Wellston, Ohio. However, the purchase of the plant proved to be quite unsuccessful. The quality of the material was very poor. It became necessary to import materials and we also discovered that the plant was located over an abandoned coal mine and that the foundation began to sink. After operating the plant for 5 or 6 years, we gave it up as a bad job and abandoned it. Lehigh constructed 2 new plants at Ormrod, a total of 3, because the operation of the first one had been very successful. The demand was increasing and we were able to sell the output of the plants. At the present time,
26579 only one of the Ormrod plants is operating, although the second one could be operated. The plant at Fogelsville was built on the site of an extraordinarily good stone property. That plant has been constantly maintained and almost completely rebuilt and is today one of the best units Lehigh has. The Mason City plant is operating and is one of Lehigh's best plants. It was built in 1911 because Lehigh discovered at that time that if it hoped to hold the business it had built up in the northern part of the Mississippi Valley from its Mitchell plant against the competition of newly constructed plants in that territory, Lehigh must provide manufacturing facilities of its
26580 own. The Metaline Falls plant was built in 1911 by the Inland Portland Cement Company and acquired by Lehigh in 1914. It is operating today and is in ex-
26581 cellent condition. Lehigh has had a total of 3 plants at New Castle, Pa., but operates only one today.

26582 Lehigh purchased the plant at Oglesby in 1916 in
26583 an attempt to hold business which it had formerly built up from its plant at Mitchell but which was being taken away from Lehigh rapidly by other newly constructed plants in the Illinois field. The plant at Oglesby is in operation today. Lehigh purchased a plant at Iola, Kansas in about the latter part of 1916. The circumstances were almost exactly the same. In the case of Oglesby, Lehigh wanted to hold its business against the competition of newly constructed plants in the Kansas territory. Lehigh purchased the Fordwick plant from the Virginia Portland Cement Company in 1915 and continued to operate it as the Virginia Portland Cement Company for 3 or 4 years, and then took it into the Lehigh company. The
26584 Birmingham plant was built by Lehigh in 1923 and is in operation today. It was built for the same reason as the other plants which Lehigh built or acquired. Lehigh had formerly enjoyed a very large business in the southeastern territory, but it was rapidly cut down by the construction of new plants, and we realized that if we wanted to hold those markets, we had to provide productive capacity of our own. This was the factor that determined both the purchase of Fordwick and the construction of Birmingham. The reasons for the acquisition of the Bath, Alsen and Union-bridge plants were somewhat different. Lehigh enjoyed a very high sales position in the territories which these plants served. We had been successful in marketing the product of the plants we had and wanted to get new capacity so we could continue to strengthen and improve our position. The Bath plant is not operating today. It operated for about 10 years and we had purchased it but then found that the stone supply was poor and the plant gradually running down.
26585 The Alsen plant was purchased in 1925. Lehigh ran it for a couple of years after we had purchased it. It was bought at a receiver's sale and was in very bad shape. We knew that it required rehabilitation, but because of the depression, that program was delayed until this year. It is now being completely reconstructed and will be in full operation by the beginning of 1940. The Union-bridge plant was also purchased at a receiver's sale. It has been operated consistently and constantly since we took it over, and has been completely rebuilt, and is today an excellent operating unit. Lehigh's purchase in 1925 of

the Bath, Union-bridge and Alsen plants was not actuated or prompted in any way at all by desire on our part to remove from the market the companies which had been operating the plants. It was entirely a matter of having been successful through aggressive sales effort in selling our product in that territory, and we were looking for new fields to conquer. The Bath and Union-bridge plants are
in District 1, the Lehigh Valley district. The con-
26586 struction of the Sandt's Eddy plant had been started by the Bath Portland Cement Company in 1925. We were approached by the holding stockholders of the Bath Company with an offer to sell the stock of the company. After some negotiations we did to completely buy it.

26588 The reasons for Lehigh acquiring that interest in Great Lakes were that Western New York State has always been one of the strongest sales territories of Lehigh. Lehigh realized that it must provide itself with productive capacity in that territory if it hoped to hold the market. Several years before it purchased the interests of Great Lakes, it had purchased a cement rock quarry a short distance outside of Buffalo. The property was not a very desirable one but it was the best it could get. Because it was not very desirable, Lehigh delayed going ahead with building a plant. In the early part of 1926, Great Lakes started building a plant at Buffalo, and before they got very far along, they had difficulty in financing it. They approached Lehigh to take an interest and Lehigh decided it would be
good to do so rather than proceed with its own plant
26589 at a less desirable location.

The primary reasons for the acquisition or construction by Lehigh of its various mills fall within two sharply defined periods of time. Up to 1911 the new plants built or acquired by Lehigh were so built and acquired because the company was growing and expanding its operations and desired to get new capacity which it could use to build up its business. After 1911 for the largest part, the plants were acquired or built for the purpose of holding the business we had built up as against the construction of new plants, although that statement does not apply to the plants at Bath, Union-bridge and Alsen which I have already discussed separately and which were purchased

and built simply to give Lehigh new capacity to
26590 serve an expanding organization. Without going into the remainder of these companies separately, that covers Lehigh's position generally.

Q. Have you had to abandon markets from time to time, Mr. Bowen?

A. Only to a comparatively limited extent. The markets which we built up originally from our Lehigh Valley and Mitchell operations have, for the most part, been held by the Lehigh Valley through the process which I have described. The territory from which we have been completely driven, not been able to hold, are Michigan, parts of Texas, parts of the Northwest and Colorado. Beyond that I think I can say correctly that we are today holding and serving all the territories which we built up during our history.

Q. Now, as to your market territory, which is the market area into which you ship from the Lehigh Valley?

A. Roughly, New England, New York City, and the eastern part of New York State, New Jersey, Delaware, and eastern Pennsylvania.

Q. And does that include such metropolitan areas as Boston, Philadelphia, and New York City?

A. Yes, sir; it does.

26591 Q. What is the area into which your shipments are made by the Buffalo plant?

A. Western New York State, northwestern Pennsylvania, and the eastern part of Ohio.

Q. Does that include any metropolitan or densely populated sections?

A. Principally Buffalo and Cleveland.

Q. You mentioned a grinding plant of the Great Lakes Company at Cleveland. What territory does it serve?

A. Cleveland and the eastern part of Ohio.

Q. And Union-bridge, what is its territory?

A. Principally Maryland, District of Columbia, small portions of Pennsylvania and Virginia.

Q. Does that include any metropolitan districts such as Baltimore and the City of Washington?

A. Yes.

Q. And what territory does your New Castle mill serve?

A. Small portion of the western part of Pennsylvania, the southwestern part of Ohio, and a very small portion of West Virginia.

Q. And the Fordwick mill?

A. Mostly the State of Virginia, all of North Carolina, most of West Virginia.

Q. And Birmingham?

A. There are the six southeastern States, South
26592 Carolina, Georgia, Florida, Alabama, Louisiana, and Mississippi.

Q. Are there any important markets in that territory?

A. There is more or less fluctuation in the importance of the markets of that plant, from time to time. The important markets have been Miami, Birmingham, Atlanta, or New Orleans.

Q. Take up the Mitchell mill. What territory does it serve?

A. Southern part of Indiana, part of Illinois, Kentucky, part of Tennessee, the western part of Ohio.

Q. Is Indianapolis and Cincinnati in that territory?

A. They would be the principal ones, the large ones.

Q. Now, your Oglesby mill: What territory do you serve there?

A. Principally Illinois, Wisconsin, northern part of Indiana.

Q. Does that include Chicago?

A. It would include Chicago.

Q. And the Mason City mill?

A. Iowa, Minnesota, North and South Dakota, and part of Nebraska.

Q. And Iola, Kansas: Where do you sell from that mill?

A. Kansas, part of Nebraska, Oklahoma, parts of Missouri, part of Arkansas, and part of Texas.

Q. Any part of New Mexico?

A. Yes, sir; part of New Mexico.

Q. And Metaline Falls: What is its territory?

A. It serves the eastern part of the State of
26593 Washington, small portions of Montana, Idaho, and Oregon.

Q. Is Spokane in that district?

A. Yes.

Q. You have mentioned these marketing areas in the cities, in some of them. Are the demands in any of those, Mr. Bowen, or is the demand constant over a period of time?

A. No, the market is constantly fluctuating, depending upon the existence or non-existence of larger construction projects and that fluctuation is a very wide one.

For instance, I would say in the City of Boston this year there will probably be twice as much cement consumed as there was last year simply because last year there was a great slump in construction in Boston whereas this year there are a large number of projects there.

The same situation exists in small town markets. While the demand is somewhat more constant, there, it fluctuates also, in a large measure, depending on the economic or agricultural conditions.

For example, the middle-western territory in the grain-raising field will have a larger or smaller demand for cement, depending on the showing of the crops. It is also very noticeable that frequently that even in small-consuming areas, these areas that are ordinarily small-consuming areas, the existence of a large road project, hydro-electric project, or water supply project, may, in some years,
26594 cause that very small market to use more cement than is used in the same year in the nearest metropolitan market.

Lehigh's principal raw materials are the same as those of other companies. Lehigh's materials in the Lehigh Valley are essentially limestone and cement rock and at all other locations they are limestone and either shale, sandstone or some other form of siliceous material, and, of course, coal and gypsum are necessary. Lehigh's
26595 coal in the Lehigh Valley district comes from the West Virginia field; at Buffalo, it usually comes by rail and lake from Ohio and West Virginia; at Unionbridge and Fordwick, West Virginia coal is used; Birmingham uses Alabama coal produced not far distant from the plant; New Castle uses Western Pennsylvania coal; Mitchell and Oglesby have used both Indiana and Illinois coal; Mason City and Iola burn gas, and Metaline Falls uses coal from both Washington and Montana. Lehigh uses other fuel than coal. I mentioned that it uses gas at Mason City and Iola.

26600 Lehigh operates at all its locations with raw materials produced at those locations with the exception of the Buffalo mill of Great Lakes. There have been very rare and infrequent occasions when it has purchased a small amount of limestone at Ormrod. At Buffalo the operation is based on the use of limestone produced in Northern Michigan, brought to Buffalo by lake steamer, plus shale produced by Great Lakes on property owned by it

some twelve or fourteen miles outside of Buffalo. Without going into each one in detail, that covers generally the situation for all Lehigh's mills.

Lehigh has attempted to keep up with the art by making constant and repeated improvements. Its policy has
26601 been to spend enough money to keep its plants in shape to produce material of the best possible quality and to take advantage of every possible way of reducing costs. Conversely as its older plants have become manifestly obsolete, it has refrained from spending undue sums on them but has charged them off and taken the loss. Early in the depression, feeling that it would be a long time before the demand for cement returned to former levels, Lehigh evolved a definite program as to the plant which it felt had a future, and concentrated its principal efforts on keeping those plants to the highest possible pitch of efficiency.

26602 The moderinization accomplished in this way has consisted of installed waste heat boilers in some plants; completely electrifying others, building new storage facilities; installing air separators at practically all plants for increased efficiency and economy in grinding; and in many plants installing improved grinding equipment both as to the raw materials and the clinker.

Lehigh's experience as to the cost of manufacture at a plant which has been in existence for a number of years as compared to an up to date mechanical process is
26603 that the older plant which has been fully maintained and kept up to date will produce cement at as low costs as many of its later more modern plants. Le-
26604 high's expenditures for these improvements along the lines I have indicated, which it terms capital expenditures have averaged approximately $1,000,000 a year.

By Mr. Leisure:

Q. Now, do the products which you manufacture, Mr. Bowen, for ordinary use, do they conform to the standard specifications?

A. Yes, they do. The demand is for that sort of a product.

Q. Is there any demand, as far as your company is concerned, for cement which does not meet these specifications?

A. There is no demand for cement that does not at least comply with the standard specifications. There are a good

many buyers who specify, individually, cement, which, in addition to the A. S. T. M. requirements, include certain additional features or qualifications.

26605 Q. You told us about your own company with respect to these standard specifications. What has been your observation and experience as to your competitors? Do they also meet standard specifications in the manufacture of cement?

A. Yes; that has been my observation. The demand from the trade is primarily for cement that complies with the A. S. T. M. specifications.

Q. You told us that before. I am now asking you why that is.

A. Well, consumers are interested in materials of known quality. Architects and engineers would be in a state of hopeless confusion if they didn't have some sort of standards they might use in their work. That is a practical necessity, and out of it has come, over a period of years, a general acceptance by most engineers and architects of the American Society for Testing Materials' standards for various materials. Cement is one of those materials

26606 so covered, and our experience is that the great majority of the people that write specifications avail themselves of that standard in preparing their specifications.

Q. That is, the majority of your buyers?

A. Yes.

Q. How long have there been standard specifications for Portland cement?

A. Oh, for at least 30 years, to my knowledge.

Q. Have you observed whether or not there is any relation between the specifications of the standard Portland cement and the price?

A. Yes; I have observed that there is. If a buyer specifies cement of a given standard, it follows that he is unwilling to pay a higher price to one producer than to another.

Trial Examiner Norwood: He said relations as between the quality.

The Witness: I beg your pardon?

Trial Examiner Norwood: Is there a variation of price with the variation of quality?

Mr. Leisure: I think you misunderstood me, Judge. What I meant to say, I was asking him the relation between standard Portland cement and price.

A. Well, that relationship, as I have observed it as between cements of different manufacture, but all manufactured to conform to the A. S. T. M. specifications,
26607 the buyer is unwilling to pay a premium to any one of the sellers and that, therefore, there is a very direct relationship between the specification requirement and price.

Q. And as to that, on standard cement, can you sell your standard cement for any other price than your competitors, selling the same grade of cement?

A. Our experience, definitely, is that unless our price to the buyer is at least as low as the price of our competitor, we can't hope to participate in the business.

Q. Are your sales, Mr. Bowen, made on the basis of delivered prices?

A. Yes, with respect to commercial customers, they are.

Q. Suppose you tell us the reason for that, please.

Trial Examiner Norwood: Tell us your reason for it.

A. Maybe I misunderstood the question.

By Mr. Leisure:

Q. You said your sales were made on delivered prices. I wanted to ask you why; that is all.

26608 Mr. Wooden: I can't do more than stipulate the evidentiary facts, Your Honor, and if they have some other reasons they want to bring out through the witness than those they have already testified to, then they can do that.

Trial Examiner Norwood: If you have any reasons I think you might bring them out and accept the lead-
26609 ing Counsel for the Commission statement, or stipulation, as to the rest of it, then let us eliminate these—

Mr. Leisure: I want to save all the time I can in these proceedings, but I don't want to try my case by stipulation so far that when I get through I haven't any evidence to support the facts admitted in this case.

Trial Examiner Norwood: If your points are admitted you don't need any evidence.

Mr. Leisure: He hasn't admitted anything, that I know of.

Trial Examiner Norwood: He offered to admit that the reasons of this company were the same as the reasons shown by Aetna, testified to by witnesses heretofore.

Mr. Jacques: If Your Honor please, we are a defendant in this case. It has been a matter which has caused us very considerable expense and time. We don't know—we have made no study of what Alpha does. We are not saying we did the same thing Alpha did. We don't know.

Here is a man that knows what his company did and why they did it, and we think we are entitled to put in our defense.

If Mr. Wooden wants to withdraw the complaint against the Lehigh Company, I will take that as a stipulation.

26610 A. Because we find the competition at destination and because our customers buy on the cost of the material at destination. Our quotations face the reality of that situation, and we find them entirely satisfactory to our customers.

By Mr. Leisure:

Q. How do you quote railroads?

A. If we have a plant on the line of the railroad, we quote our prices f.o.b. the point of delivery to the railroad at the plant. If we are quoting the railroad on whose line we do not have a plant located, we quote the railroad f.o.b. its nearest junction point to our plant, or, if, as frequently happens, the railroad companies request prices f.o.b. to the point at which they finally intend to use the cement, we quote them f.o.b. that destination.

Q. And what is your reason, Mr. Bowen, for quoting railroads in this manner?

A. That, again, is where the competition lies.

26611 Railroad companies haul material over their own lines from the place to which we deliver it. We prepare their prices on that basis. Unless our price at the point to which we make delivery to the railroad is at least as low as the price quoted by our competitor, we can't hope to get the business.

Q. How do you arrive at your delivered price, Mr. Bowen?

A. We find the destination price at every destination at which we sell, or are trying to sell, and our quotations to our customers are at that destination price.

26612 Q. Mr. Bowen, this morning you told us that your Company sells at delivered prices. I had just asked you before recess, and I would like for you to tell us now, describe how your company arrives at its delivered price.

A. Yes, in most cases that delivered price is a price that has originally been quoted by our company which represents the return to us that we would like to get at the time on all of the cement we sell, if we could. At other destinations the market price is a price originally quoted by some competitor which we either meet or refrain from quoting.

By Mr. Leisure:

Q. How long has it been the policy of your company to quote delivered prices?

26613 A. It has been our practice for about 25 to 30 years, although the practice of quoting delivered prices was not initiated at any particular time, it was a gradual development.

Q. Have there been any instances where you have quoted prices for commercial business at points where there were no market prices that you could discover?

A. Yes, there have been some cases where we have quoted prices for such destinations.

Q. You say "some"; now, is that often, or not?

A. Comparatively infrequent.

Q. How do you arrive at the price you quote in such instances?

A. Most of the destinations where that situation from time to time exists are destinations very close to others in which we find that the prices that the Lehigh Company quotes are not lowered by any competitive cases. In such instances we compute the destination price and act in the same manner as we do at adjacent points.

In a smaller number of cases the destinations are in the vicinity of other destinations at which we have found competitors quoting prices lower than we would wish to quote, and for which we have met the competitive quotations. In those cases we calculate the price the best way we can from the competition we have found in that area.

Q. Do you mean by that that you are able to esti-

26614 mate what the prices of your competitors will be where you know of no market prices at a particular point?

A. Yes, we do that, in those cases.

Q. How?

A. By analyzing the competitors' quotations that we find in that territory. If we analyze a number of such com-

petitive quotations by deducing from the destination prices the freight rate from the competitive mill and find that that resultant figure reflects a constant figure at that competitor's mill, we assume that that competitor is operating as a basing mill, and that he is using that base figure for arriving at prices in his territory.

If we find that fifty of his quotations for fifty destinations reflect that sort of a picture, we assume that at the fifty-first destination he is going to operate in the same manner.

Q. Now, you have used the word "base" several times, and we have had considerable testimony by different people using the word "base" in different ways. Before we go further with that would you mind explaining to us what you mean when you use the word "base," a "base"?

A. What we meant is that when we analyze a competitor's quotations in the manner that I have described, by deducting freight rates from a competitive plant from his destination prices, when that process reflects a constant
26615 figure at the competitor's mill, we call that mill a basing mill, and the constant figure a base figure.

Q. Now, you told us about anticipating from the knowledge you have what the market price will be. Has it or has it not been your experience that your competitors sometimes quote lower than the going market price?

A. Yes, that happens upon occasion. In fact, it happens with reasonable frequency. Sometimes we find out about it before the business is lost, and sometimes we don't find out about it until after the business is lost.

Q. What is the policy of your company in such a situation, Mr. Bowen?

A. Our company is operated under a one-price policy, by which I mean that we make our quotations publicly, and do not sell at any other prices than we have quoted, until we issue quotations at different price levels. With that sort of a policy our only alternatives have been to either forego the business or to endeavor to meet the competitive situation by quoting a lower range of prices.

We have at times followed both courses, where the effect of the lower competitive prices has not been to impair our business to too serious an extent, we forego the
26616 business; where the lower competitive conditions have affected our business more seriously, we have reduced our prices in an effort to arrive at prices at which we could sell.

What we have done in each case has been dictated entirely by our best business judgment.

Q. What method do you adopt for arriving at any figures you use; that is, as your base figures at your mill?

A. Well, that is entirely a matter of business judgment. We take into consideration all of the conditions as we find them in the territory with which we are dealing. On the one hand, we want to get as much for our product as we can, and then there are a number of factors that tend in the opposite direction. I can name a few of them.

First, we want to get prices around our mills which, while if possible returning a profit to us, will at the same time make it as tough for our competitors as we can. We like to have prices that will not be so high as to induce the use of competing materials, or prices so high as to encourage construction of new mills in the territory, and, perhaps most important of all, we want the prices that there is some hope that our competitors will respect, because in the last analysis it is competition that determines the price that we can get.

In every case, as I have said, it is just a matter of applying our best business judgment to all the circumstances.

26617 Q. Mr. Bowen, has the Lehigh Company at any time had any agreement or understanding with any competitors as to the manner in which it or its competitors would arrive at prices, to your knowledge?

A. No, it has not.

By Mr. Leisure:

Q. Has it had any agreement or understanding with any competitors as to what base figures will be used in arriving at prices?

A. No, it has not.

26618 Q. How long has your company been following the method of developing destination prices and mill figures in the manner which you have been telling us about, Mr. Bowen?

A. In a general way, for something between 25 or 30 years, although, as I have said, the method has not been adopted at any particular time; it was a matter of development growing out of the growth of the business, and the increase of competition in the business.

Q. Did it sell by that method prior to the 25 or 30 years? You said 25 or 30 years.

A. Prior to that time the sales of the Lehigh Company were to distributors. The method of sale was negotiate with the distributors, at intervals, sales of fixed quantities of cement which, in the beginning, were at all times f.o.b. mill prices.

The distributors' commitments were outright commitments to take the quantities of cement agreed upon, and his sales were at whatever prices he chose to get, and could get in the territory in which he handled the distribution.

Q. Well, now, during that period of time—I mean, during the time when you marketed through distributors, did you deliver to the distributor or to the distributor's customers?

26620 A. The shipments were consigned directly to the
26621 distributor's customers upon instructions placed with us by the distributor.

By Mr. Leisure:

Q. In your experience in delivering to the distributors in this first year and a half, I think you said, just what was the method of distributing your cement at that time?

A. I might say that I was personally acquainted with most of the distributors, and had full knowledge of the situation—

Q. I just wanted you to tell us in a word what the arrangement was; that is all.

Q. I am now asking you what your arrangement was with the distributor.

A. During the time beginning 1911 the function of the distributor and the detailed character of the relations between the distributor and ourselves had undergone considerable of a change.

26623 In the early days of the distributor relationship the sales were at f.o.b. mill prices. The commitments from the distributors to ourselves were definite commitments and the distributor was at perfect liberty and did sell as he could, for whatever measure of profit he could get.

This situation, however, changed materially as new plants were built throughout the territories. There was an increasing number of cases in which the distributor found himself faced with local competition which he couldn't meet by taking the cement for which he had committed himself at a definite price.

In such cases he came back to the Lehigh Company to negotiate a special price or some adjustment or concession that might enable him to meet the competition in that particular case, and because the distributor would, if no such adjustment had been made, have been unable to make the sale and the Lehigh Company would have lost the tonnage, there were frequent adjustments of that kind.

Cases of this sort multiplied quite rapidly, and under the pressure of this development the distributor, in an increasing number of cases, were selling the Lehigh cement at destination under prices that were arranged between himself and the company, in order to deal with the individual competitive situations.

26623 The distributor, in many cases, made his sales f.o.b. destination although the price made to him by the Lehigh Company continued, for the most part, to be an f.o.b. mill price.

The point is that that period was a period of transition in which there was a very sharp change from the original method of outright commitment and resale to a point where the prices were fixed to meet the local competition by arrangement between ourselves and the distributor.

Q. From what you have said, I take it that the quantities and prices were negotiated between the distributors and yourselves. How often was that done?

A. Several times each year, or, sometimes, more often.

Trial Examiner Norwood: In other words, if he wanted to go into more distant territory than he had been covering, he would come to you and get a lower price so that he could absorb the freight and deliver to this distant territory?

The Witness: No, Your Honor, not to go into more distant territory, but to be able to continue to hold business in the territory which was allotted to him.

Trial Examiner Norwood: That is, when they cut the price against him he would ask you to help him by giving him a reduction?

The Witness: Or when a new plant was built in his territory that quoted lower prices, they came to us for adjustment to enable them to sell.

26624 By Mr. Leisure:

Q. I am not sure I know what you mean by these concessions. Can you clarify that?

Q. The last question was as to what the concessions were that you made and to explain what you meant by them?

A. The concessions involved giving the distributor on the particular business concerned a lower price than
26625 had been previously negotiated. Perhaps an example may clarify the situation.

Let us say that we were selling a distributor at the price of 80 cents f.o.b. mill. The distributor's freight rate to an important market in his territory was 50 cents per barrel. That gave him a cost at destination of $1.30 to which his profit had to be added.

He found he could sell in that market a substantial quantity of cement. That in order to do so, to meet the competition in the market, he would have to sell this cement at $1.20. The distributor came to us and said: "I can make a sale, but I can't make it at the price that I have got. I won't be able to take my commitment from you unless you make an adjustment whereby I can meet that competition," whereupon, in many cases, such an adjustment was made if the business seemed sufficiently desirable, and whether that reduction was made, as it was in some cases, by reducing his f.o.b. mill prices, or whether it was made, as it began to be made in an increasing number of cases, by giving the distributor an f.o.b. destination price, the fact remains the adjustment in every case was made in order to meet a competitive situation existing at the destination.

Q. To whom did the distributors sell, then, Mr. Bowen?

A. Dealers, contractors, railroad companies, consumers.

Q. And did these distributors—did they deter-
26626 mine the price at which he sold the Lehigh plant's cement to his customers?

A. Yes. In the beginning that was a matter entirely of their own determination, but the situation gradually changed until by 1911 most of the cement the distributor sold was at prices mutually agreed upon between himself and ourselves to meet the competition at the markets.

Q. Now you say it gradually changed. What was the result, Mr. Bowen? To what extent did this change the market conditions, if at all? I mean the result, of course, in change in the distributor's function?

Trial Examiner Norwood: Just tell us what he did.

Mr. Leisure: Yes.

A. Well, as I said in the beginning, the distributor was very definitely an independent business man buying cement from us in agreed quantities at an agreed price. He carried his own accounts, had full control of sales in the territory allotted to him, so it was his business.

Then as the situation as I have already described multiplied, and there came an increasing number of cases in which individual prices were negotiated, the result, in its final event, was to change the function of the distributor until by 1911 he was virtually a broker, selling for our account, cement at prices agreed upon between us on which he received a profit agreed upon between himself and our company, and as we looked upon it he was to all in-
26627 tents and purposes a broker except he still continued to carry his own account.

Q. Well, did there come a time when the Lehigh Company eliminated distributors?

A. Yes. By 1911 the Lehigh Company had reached the conclusion that the distributor had outlived his usefulness and we did carry out a program that eliminated all distributors.

Q. Was that done through any organization of your own?

A. Yes. As the distributors' territories were eliminated we set up in each territory our own sales organization which sold our product to the same people that distributors had formerly sold.

Q. After eliminating the distributors, how did the Lehigh Company quote its prices?

A. After the completion of the elimination of the distributors, which happened in 1912, the Lehigh Company quoted its prices f.o.b. destination to an increasing extent, and by about 1913 all our commercial quotations were at f.o.b. destination prices.

Q. Now, you told us that your company took over the dealer business of distributors and found that distributors had been selling f.o.b. destination. Do you have just a general recollection on that, or can you give us any specific knowledge on that point?

A. Oh, yes. I could cite as an example the case of our distributor whose territory was the western part of
26628 New York State. The arrangement with him was terminated, as I recall it, early in 1912.

Up to that time our sales to that distributor had been at

destination prices and a good many of them had been at f.o.b. mill prices, until the arrangement was terminated.

When we took over that territory from the distributor we found that almost without exception his prices had been f.o.b. destination. Even in the cases where he bought f.o.b. mill, he continued the method that he had been using.

Q. Through what kind of a transaction did you take over the business of your distributors, Mr. Bowen?

A. By negotiating with them, buying out any asset that he might have, and where necessary, and, as necessary, paying him a lump sum for his good will that he might have had.

Q. As to your own experience in dealing with these two methods, what, if anything, did you observe? Was the creation of your own sales organization any more economical than the use of distributors?

A. Oh, very definitely; we realized and found that after we built up our own organization that the direct organization method was much more effective, and, of course, the change in the distributor's function had brought about a state of affairs where, because his margin of profit was constant, he was interested only in volume rather than in profit.

26629 Q. And you have told us about the history. Did you take over any of the distributors' business in the Mid-West?

A. Yes. The Middle West was the territory in which we first eliminated distributors. We eliminated distributors in the West about 1907 or 1908 and the success we had in building up the organization in that territory led us to take the further step to eliminate the remaining distributor connections.

Q. And did you eliminate it also in the East—or, let me put it this way: What other territory did you take over and eliminate the distributors?

A. We had distributors all through the Middle West and had distributors in New England, New York State, New York City, North New Jersey, eastern Pennsylvania, and all through the Southeast.

Q. And what one did you take over in the Mid-West?

A. Kelley Island Lime & Transport Company were the chief distributors and handled most of the Mid-West territory. We eliminated them along in 1907 or 1908, along with a couple of smaller ones.

Q. And then did there come a time when Lehigh was marketing all of its product directly through dealers?

A. Yes, sir.

Q. When did that begin?

A. Around 1912. The process of eliminating distributor relations had been completed, and the Lehigh Company was operating in all territories with its own
26630 direct selling organization.

Q. And has it continued marketing directly in that way up to the present time?

A. It has done so ever since.

Q. Were any other cement companies selling their products directly to dealers and not to distributors in 1911, Mr. Bowen?

A. Yes. Some of our competitors were selling through their own organizations for some years before we made the change, and some others continued to sell through distributors for a good many years after we discontinued them.

26631 By Mr. Leisure:

Q. Now, during this time that you have been telling us about, I mean, during the time that you sold through distributors, Mr. Bowen, did you have similar f.o.b. mill prices to all of your distributors?

A. No, the prices were a matter of individual negotiation, and frequent differences as between different distributors.

Q. Well, now, coming on down to a later date. You have used the term "base," and told us what you meant by it. I would like for you to explain your own experience and observation as to how it developed.

A. When the Lehigh Company sold its cement to a distributor, at a f.o.b. mill price, and the distributor used that price as a basis for figuring of prices in his territory, that in itself would constitute what I would call a basing point, in—

Trial Examiner Norwood: That is, you sold the distributor f.o.b. mill at a fixed price?

The Witness: Yes, sir.

By Mr. Leisure:

26632 Q. When was the first development of the bases as we now speak of them, according to your experience, Mr. Bowen?

A. I would say that the first development, a situation which in some measure resembled what we have today, was about 1905 or 1906, by which time there was a great number of cases—

Trial Examiner Norwood: Now, you are getting beyond your experience there, are you not?

The Witness: Your Honor, I might say that I started in the cement business in 1911, had access to and did work on the records of the company for a number of years prior to that, had personal acquaintance with all the distributors whose relations we terminated, knew from that contact with them, as well as from the members of our own organization.....

By Mr. Leisure:

Q. Well, let me ask you, Mr. Bowen—

The Witness (Continuing): —as to the developments—

By Mr. Leisure:

Q. —your own experience,—I think you had told us that you had been giving your distributors an f.o.b. mill price, and that that price itself—

Well, let me ask you: Did that price itself,—did it or did it not come to be a base price, in your experience?

A. I would so consider it; yes, sir.

Q. Then, what happened during that period, if anything, when a new plant would be constructed, in a

26633 distributor's territory?

A. If a new plant was constructed—

26635 By Mr. Leisure:

Q. I had just stated, Mr. Bowen, that you have told us that you had been giving distributors f.o.b. mill prices, and that in your opinion that price came to be a base price. And then I asked you—you started to explain in answer to my question as to what happened when a new plant was built in the territory.

Have you got my question clearly?

A. I think I do.

Trial Examiner Norwood: Well, you better bring out the fact that a new plant was in that territory, and at what time.

26636 Can you state that for us, first?

The Witness: I think I can.

Trial Examiner Norwood: Go ahead.

A. By citing an example.

The Lehigh Company had the distributor at Richmond, whose territory embraced the States of Virginia and North Carolina, with whom the Lehigh Company originally sold at a price f.o.b. its mills in the Lehigh Valley territory. Then a plant was built at Fordwick, Va., by the Virginia Portland Cement Company, and over a course of time that—

Trial Examiner Norwood: When was that?

The Witness: It was at some time prior to 1911, because the situation that I am describing existed at the time I came into the business.

By Mr. Leisure:

Q. And that was the situation which you dealt with when you came in?

A. Yes, sir.

Q. All right. Will you just tell us about what you did and what happened?

A. I know that in 1911 we made prices to our Richmond distributor, you might describe it, of two kinds; one a price f.o.b. our Lehigh Valley mills, and the other
26637 consisting of special prices made from time to time to meet lower prices that were quoted by the Fordwick, the mill of our competitor, and I would say that that situation, as we considered it, and as I consider it now, constituted a—that competitive plant, as a competing basing mill.

Q. Well, do you or do you not mean by that that the competitive price figured back at that time at a given figure?

A. That 1911? They did.

Q. And you met that figure?

A. Yes, sir.

Q. And, as you have described bases, was that or was that not a base, as you described it?

A. We considered it so.

Trial Examiner Norwood: You found that selling at various destination prices that figured back to a constant mill net?

The Witness: Which, in very large measure, did.

Trial Examiner Norwood: Yes.

The Witness: I won't say that every price we found figured that way.

Trial Examiner Norwood: I see.

By Mr. Leisure:

Q. Now, then, with the conditions prevailing which you have just described, will you tell us, further, your experience as to your customer reaction with respect to
26638 these delivered prices during that period of time?

A. The customer reaction was increasingly favorable to destination prices.

26641 Q. Mr. Bowen, did you actually solicit business during the period of time I am now questioning you about, from customers?

A. I am not sure that I quite understand the question.

Q. What I am asking you—what I want to find out, Mr. Bowen—is whether or not you had actual contact with customers at this time?

A. Yes, I had contact with customers beginning in 1911.

Q. Does the answer which you describe on the record,—does that give your actual experience in dealing with customers at that time?

A. Yes.

26644 Q. Mr. Bowen, during this period of time that we have been discussing, you have told us that you had conferences with customers with respect to their attitude, with respect to whether or not they did or
26645 did not favor these delivered prices. Is that a fact?

A. Yes, it is.

Q. Since your previous answer has been stricken, will you tell us again, starting in again, telling us what, if anything, they told you, and what you learned during that period from your customers?

A. I am sure that I cannot repeat verbatim conversations that occurred in 1911 and 1912, but during that period as the Lehigh Company terminated distributor arrangements and set up its own sales organization we had, and I had, numerous occasions to talk with the dealers throughout those territorities.

I know, and can you say very definitely, that in talks with dealers about the question of quoting prices, f.o.b. destinations, that without any exception that I can recall the dealers expressed themselves as preferring such quotations rather than the f.o.b. mill quotations.

26648. Q. Dropping that subject, then, Mr. Bowen, and going on to another topic.

How did you learn what prices your competitors are quoting, Mr. Bowen?

A. We learn it from constant contact with the trade through our sales organization and our branch offices, through all the members of our force. We have 150 men covering a territory, and if there were any changes in the price situation in that territory, with great rapidity,
26649 within an hour after a change of prices in the territory, we receive a stream of information pertaining to it.

Q. Well, now, as to these salesmen, do you tell them to call on any particular dealers, or—

A. Yes.

Q. Let me put it this way: On what dealers do you instruct your salesmen to call?

26650 A. Our salesmen are instructed to call on all the dealers in their respective territory whom we sell, those whom we are trying to sell, and, in addition, at least twice a year, on even those dealers in the territory whom we are not at the moment trying to sell. In short, the salesman's instructions are to know and to have contact with every one in his territory who is either a present or potential buyer of cement.

Q. Without going into a number of questions, Mr. Bowen, there has been testimony here that in the experience of some of the companies the dealers are always ready to tell the salesmen of any change in price.

Just to be brief on it, has that been the experience of your company?

A. Yes, sir.

Q. And why is that, as far as your company is concerned?

A. Well, if a change in price represents a reduction in prices, the dealer wants to know whether we are going to meet the price and give him the benefit of it or if the change represents an increase, he is equally interested to know whether we intend to follow the increase so that he may take advantage of the opportunity of placing as
26651 much business as he can at the prior price.

Q. How do you learn which mills are basing points?

A. It is a matter of common knowledge in the business.

Any salesman or clerk in a district office, given a sufficient number of competitive quotations, can readily determine whether those quotations reflect a constant figure, and if they do then we consider it a basing point.

Q. Well, do you keep any record of basing points which you use in calculating your prices?

A. Yes, we keep a record of all the basing-point information that we can get.

Q. Well, you say "basing-point information." What do you mean by that? In what form do you compile basing point information?

A. We have no particular form. We merely keep a record of such information as we can develop by field research.

26652 The witness identified Resp. Ex. 1109 A to D as a copy of the list of the most recent information about basing points and basing-point figures that Lehigh has assembled.

Examination on Voir Dire by Mr. Wooden.

Q. Mr. Bowen, is this a list that was made up for production here, or is it a list that you make up in the ordinary course of your business for ordinary business purposes?

A. That is a list that I had prepared for production here, but it is a copy of the same information that we have collected for ordinary purposes.

Q. And you have been collecting for a long period of time, the same information?

A. We have collected it from time to time as—

Q. And put it in this form?

A. Yes, sir; putting it into form, from time to time.

Q. You say this is the most recent information you have on these points. What are the respective dates to which this information applies?

A. With respect to each of the points shown on the list, it would be the most recent change in the figure

26653 as reflected by the quotation.

Q. And there might be different dates for different points shown here?

A. Oh, yes.

Q. Are they all effective now, so far as you know?

A. Yes; so far as I know, they are.

Q. And are the figures inclusive or exclusive of package and cash discount?

A. They are exclusive of package but they are before the deduction of cash discount.

Q. In other words, they include 10 cents?

A. They are the base figure that we calculate from the destination prices without taking discount into account at all.

Q. Well, do they include, in all cases, a certain figure for cash discount, or is it a varying figure?

A. To the best of my knowledge and belief, the competitors quoting the prices that are reflected in that list are all offering a cash discount of 10 cents per barrel.

Q. Regardless of locality or territory?

A. I think that is so; yes, sir.

Mr. Wooden: I would like to note an objection, Your Honor, unless the dates on which these base prices became effective are shown. There are varying dates, according to the witness' testimony, and no date is shown.

Mr. Leisure: I am sorry I can't accommodate Mr. 26654 Wooden, but that just doesn't happen to be what this witness keeps. He told us it was the most recent form, and this is the form in which he keeps it.

Mr. Wooden: I would like to ask the witness a question on that.

By Mr. Wooden:

Q. When you receive this information don't you make any record of the date on which you receive it?

Mr. Leisure: I am going to object to that question. It doesn't form any part of the voir dire. It is purely cross-examination and he has already answered Mr. Wooden's question that the dates are not there. As to why they are not there, that is certainly not voir dire.

Trial Examiner Norwood: He asked him whether he did it or not. I think he might answer that question.

Mr. Paulson: It goes to the completeness of the exhibit.

A. Well, of course, this tabulation is the composite of the information that we have received. Practically all of that information is in the shape of record reports from our salesmen or branch offices.

Of course, all those reports bear dates. Therefore, we

do have in our files communications and reports which are the source of the information appearing on that list, and we have the dates of all of them.

26655 Trial Examiner Norwood: Go ahead.

The objection is overruled and the document received as marked.

(RESP. EXS. 1109-A, B, C, and D, was offered and received in evidence.)

By Mr. Leisure:

Q. Referring to this Respondents' Exhibits 1109-A to D, Mr. Bowen, you have told us how you made it up. I take it that you didn't receive it from any competitors?

A. No, sir.

Q. Have you or did you make a practice of distributing this list or a similar list among your competitors?

A. We do not.

Q. Is it distributed to your salesmen?

A. No, it is not distributed to our salesmen although some portions of the information contained in the list are supplied to our various branch offices, so far as the information is of interest to them.

Q. What is the purpose of this sheet?

A. Simply to collect in the most simple and concise form possible the information that we receive from

26656 our sales organization of the price conditions throughout the territory in which we operate.

Q. Why are you interested in bases and base figures other than those of your own mills, Mr. Bowen?

A. Because we are operating in a very wide territory; have approximately 100 competitors. We are extremely interested to know everything they do and keep fully posted on the price situation in the various territories.

That list is simply an effort to keep before us, in the most concise and simple way we can, the information on that particular price situation, in the wide territory we cover, which such a fabulation can give us.

Q. Do you make up the destination prices from your list of bases?

A. Yes. After the information from the territory it is assembled in the form you have it there, the calculation of individual prices is a routine, mechanical matter.

Q. Before leaving this list I want to be sure I have exhausted thoroughly as to how you make it up. You told us

how you get this information and how you get this list up; is that correct?

A. I think so.

Q. And I again want to ask you if you receive this list, or any similar list, from any of your competitors?

A. Never have.

26657 Q. Has the Lehigh Company at any time had any agreement or understanding with any competitors to the effect that it would observe the base figures of competitors or that certain mills would be basing mills?

Q. Now, as to the delivered prices, themselves, Mr. Bowen: Do you keep any record of your delivered prices at the various destinations which you quote?

A. Yes, we do.

Q. In what form do you keep those?

A. We have a card record for each destination for which we quote and on that card there is noted the various prices. We, from time to time, quote for that destination, showing the date, the amount, the prices quoted.

Q. You told us this morning there might be a location that you wouldn't know, offhand, the price. What do you do in that situation?

A. Well, in most cases—

Q. What do you do in the situation where you do not know the price in a small town?

A. Well, in most cases I do know the price be-
26658 cause even though we may not be selling a dealer in that market the probability is we are quoting, trying to sell some dealer in that market, and, therefore, have a price, and I need only call for the card in that market to know what the price is.

Q. What do you do, then, when you are in your office and you are asked what the price is which you offhand do not, normally, know, as you suggested this morning?

A. Off of our card, our record for that destination, appears our card price.

The witness identified Resp. Exs. 1110 A to C and 1111 A to C as two dealer cards of the kind he mentioned, being card records of Lehigh's dealings with two active dealers to whom it is selling cement. There are approxi-
26659 mately 7,000 such cards in Lehigh's files, with a card for every dealer.

Examination on Voir Dire by Mr. Wooden.

Q. Referring to Respondents' Exhibit 1111, for identification, there is a heading under the word "Price," there are two divisions there, one with a letter "L" at the top and the other with "RA" at the top. What do they mean?

A. The "L" indicates quotations on Lehigh normal Portland cement. The second column with the heading "RA" indicates quotations on our high early strength, which brand name is "Red Arrow."

Q. These places under the head of "Calls" and the pencil marks that are placed in those spaces, "PP," and so on, what are they?

A. Records of salesmen's calls as posted from his daily report. Each of his initials there indicates a personal call as distinguished from a telephone call.

Q. In other words, referring to Respondents' Ex-
26660 hibit 1114-C, in June there were four calls made on this one company; is that correct?

A. Four calls made between June 1 and 6th.

Q. Oh, between June 1 and 6th.

A. Yes.

Q. Twelve calls in the month; is that correct? In the month of June? Twelve calls on one dealer; is that correct?

A. That is correct. That is a dealer in the City of Boston.

Mr. Wooden: Your Honor, the objection is made that these documents merely show the destination price quoted these two dealers as of various dates and do not in any way show how that destination price is made up, or the components of it, or otherwise.

Trial Examiner Norwood: Well, I think Counsel is very considerate in only offering two of these to illustrate his method and I think they might be received.

Mr. Wooden: I object to them, also, as irrelevant and immaterial.

Mr. Leisure: It shows the source material from which he makes up these.

Mr. Paulson: That is the trouble. We have more misleading information than you can imagine, in here. They are skirting around the edges and by loosening the rules of evidence you get a misleading picture of this situation,

and this is another attempt to mislead the court and
26661 Commission, as I see it.

There is no testimony from this witness as to where the freight rate came from. We learn from the other industry witnesses that they came from the freight rate books, and that the real true story of the picture is that the cards there are nothing more or less than something that is run off from base-point lists and freight rate books published by the Institute. They are no more significant than that.

Here, it would lead someone to believe these are independently obtained rates and basing-point prices. They are highly misleading and incompetent.

(RESP. EXS. 1110-A, B, C, and 1111-A, B, and C,
26662 were offered and received in evidence.)

26665 By Mr. Leisure:

Q. Is that so, Mr. Bowen? Are they the prices as of the dates indicated?

26666 A. They are the prices at those destinations shown; yes, sir.

Q. Mr. Bowen, as to Respondents' Exhibits 1112-A and B, for identification, I ask you to be good enough to tell us what it is, if you know?

A. It is a dealer card taken from our files and is what we call a prospective dealer card. That is a card on a dealer whom we are not at the present time selling, but whom we are trying to sell.

Q. And approximately how many of those cards do you have in your active files at the present time?

A. Between six and seven thousand.

26669 (RESP. EX. 1112-A and 1112-B was offered and received in evidence.)

Q. Mr. Bowen, I notice on this card, Respondents' Exhibit 1112-A, B, there is an item "Special Instructions" on the first page, where there is a reference to "Handles Allentown." 12033. What is that? What does that quotation have reference to?

A. It merely indicates that our salesmen calling on the dealer had reported that the brand he was then handling was Allentown.

Q. There is also a reference here to "Handles Penn-Dixie." What does that have reference to?

A. That means that at some other time the salesman

calling on the dealer reported that he was then handling Penn-Dixie.

Q. And "See Active File" written in large let-
26670 ters,—what does that indicate?

A. May I see it, please?

Q. Certainly (handing Respondents' Exhibit 1112-A and B to the witness).

A. It indicates that during the year 1931 we made a sale to this dealer, and that for some time thereafter the record was carried not on this card but on an active dealer card similar to the one previously introduced into evidence. Then when we had not sold the dealer for a whole year, we again considered him a prospective dealer, and resumed quoting him under this card, and carrying our record of our efforts to sell him on this card.

26671 Q. Now, Mr. Bowen, with respect to these prices that appear on these cards in your file. How are they calculated?

A. In the cases of points in and about our plants, they are calculated by the use of our base figure at our various plants, plus freight to destination, or, as I have said, when we have knowledge from the field that our competitors are quoting lower prices, and that those lower prices reflect base figures at the competitive mills, we calculate the prices at such destination in that fashion.

22672 Q. Do you find territories in which the market prices at destination do not relate back to your own, or a competitor's base figure, Mr. Bowen?

A. We do find a great many of them, and a great many of the prices we quote as reflected by these cards are such prices.

Q. Well, how do you obtain such information concerning such market prices?

A. From the information submitted by our sales organization the prices the competitors are quoting in territories. In some cases we quote those sort of prices ourselves; that is, quote them of our own—we quote them originally before any competitor has done so, and, in that case, we, of course, know what they are.

Q. Well, then, let me ask you: Are there many markets where the price is not the equivalent of a base figure plus freight from a mill to the market?

A. Yes, there are a considerable number of them, and they include some of the largest consuming markets.

Q. Well, how are those prices determined?

A. We find there are a number of different varieties. We find prices around metropolitan markets, which we cannot relate to any existing base figure and freight. We find prices around markets, around some cement plants, which we cannot find any such relation. We find prices to railroads. We have found flat prices applying over con-
26673 siderable extent of territory, and then we find a good many that are apparently nothing more nor less than secret departures from manufacturers' announced prices.

Q. Going to another subject matter, Mr. Bowen:

We have discussed both base and non-base mills, and you have told us how you consider base. How do you define a non-base mill?

A. Well, if I find quotations in a territory made by a competitor, and if upon analyzing those quotations by deducting freight from his mill I do not find that those quotations reflect a constant figure, but find, rather, that the manufacturer is merely following prices quoted by some other mill, then I consider such a mill a non-basing mill.

Q. Well, do you find there is a tendency toward basing or—First, let me ask you: Do non-basing-point mills become basing-point mills, and vice-versa?

A. Oh, yes, we have observed that a great many plants have become basing-point mills, that at one time were not basing-point mills, and, similarly, there have been cases of plants which, according to our observation, were basing-point mills which changed its status of that of non-basing-point mills. Over the years, I would say the tendency has been greatly in the direction of an increased number of plants which we call basing-point mills.

Q. Now, you mentioned that your Mitchell mill
26674 was a basing-point mill. Will you tell us why you made that a base mill?

A. Yes. First, when the Mitchell plant was built, it was possible to sell the output of that plant at very excellent advantage, taking advantage of the lower freight rates from that plant, and because destination costs in that vicinity were to be figured on the Lehigh Valley freight rates, and, for a long time after we built that mill we, and other manufacturers, continued to ship considerable cement from the Lehigh Valley into that territory; but as time went on and new plants were built, we changed status of that plant and

made it a basing-point mill in order that we might be able to exclude from that territory the Lehigh Valley mills which until that time had continued to ship largely into that territory.

Q. Well, now, as to that, would you say there is any difference in the way you handled your base figures in the Lehigh Valley, with all these competitors you have described there, as contrasted with the locations where you have the only mill?

A. Only when there is some unusual freight rate situation, such as had existed during the last few years.

For a great many years the freight rates from all Lehigh Valley mills to all destinations were the same. A few years ago railroad companies, in an effort to meet trucking competition, established lower rates for a 15-mile zone around each plant. This changed the freight relationship somewhat from what it had been for a great many
26675 years, but we continued to quote our prices out of the Lehigh Valley on the Northampton rates, principally because our plants are so close to Northampton that the 15-mile zones largely overlap, and there is comparatively little difference in the freight rates from our mill as contrasted with Northampton.

Q. Now, there has been considerable testimony here in the record as to some of these bases, and mention has been made of the Northampton base in the Lehigh Valley, and the fact that all the mills there in the Valley have in a large measure substantially the same freight rate.

What has been your observation with respect to that, Mr. Bowen?

A. First, plants in the Lehigh Valley territory were located in Northampton or at small stations immediately adjacent to Northampton. The railroad companies gave each of these plants, as it came into operation, the same rates; as we billed our plants in the Lehigh Valley we approached the railroads for freight rates. They readily applied the same schedules to our mills as existed from Northampton. That has been the case, to the best of my recollection, throughout, except as to the lower rates for the 15-mile areas, that I have just mentioned.

Q. You mentioned your Buffalo mill as a basing point. Why was the Buffalo mill of the Great Lakes Company made a basing point?

26676 A. We made it a basing mill in the early part of 1928, in January, 1928, as I recall it, after the plant had been operating for some few months.

Q. Was it ever operated as a non-base mill?

A. It had operated as a non-base mill during the months preceding—from the time it began shipping and until January, 1928.

Q. Well, what happened there, Mr. Bowen? Can you tell me, then, whether or not the establishment of this base at Buffalo reduced the prices for cement in western New York?

A. Yes, it did. It reduced the price at Buffalo and the points immediately adjacent by 20 cents per barrel. The establishment of any mill as a base point must reduce prices below the level existing when the plant was a non-base mill, and it does so operate.

Q. Now, is your Fordwick mill a non-base mill, or a base mill?

A. A basing mill.

Q. Why do you operate it as a base mill?

A. We purchased the control of the Fordwick mill in 1915, and began operating it in 1916. It was a basing—or had been a basing mill, before we took it over, and we continued it as such. The fact that the Fordwick mill had been built, and that it had operated as a basing point, and had quoted prices in the vicinity of its mill that were so
26677 based, was the one factor, more than any other, that made it difficult for us to continue selling cement in that territory from our Lehigh Valley mills.

Fordwick plant largely pushed us out of the territory, and when we began operating the plant we continued it as a basing-point mill in order that we, in turn, could make it as difficult as possible for our competitors to get into the market of that mill.

Q. Well, now, I would like to address your attention for a moment to Union-bridge mill. Is it a non-base mill, or a base mill?

A. It is a basing mill.

Q. Why do you operate it as a base mill?

A. We purchased that plant in the fall of 1925 and began operating it January 1, 1926. At that time it was a non-basing mill and had been a non-basing mill during most of its history, and after running the plant for some months we decided that our best interests lay in estab-

lishing it as a basing mill, and we did so establish it on the first of July, 1926.

Our object in doing so was to set in motion a competitive pressure which we hoped would make it more difficult for the Lehigh Valley mills to sell in the principal markets of Union-bridge which were Baltimore and Washington. Before we established the base prices in Baltimore and Washington, we figured on Lehigh Valley—unfortunately, the
26678 Union-bridge plant does not have a great enough freight advantage over the Lehigh Valley mills to enable us to drive them out of the picture without losing money ourselves; but the operation of the plant as a basing mill during the last 13 years has, in my opinion, very definitely handicapped and made it more difficult for the Lehigh Valley mills to ship cement into those markets.

Q. Now, you said this morning, if I am not mistaken, that Mason City was a base. What are your reasons for having a base at Mason City, Mr. Bowen?

A. We built the Mason City plant because we found that we could no longer hope to sell cement successfully in that territory from our Mitchell, Ind., plant. New plants have been built in that territory which were rapidly driving us out. When we completed the plant, and began operating it in 1911, we very quickly decided that our best interests lay in making the plant a basing mill, thereby making ourselves a part of the situation which was forcing our Indiana mill out of those markets, and, of course, by the same token, to make it just as difficult as possible for the other mills in Indiana to continue to enter that field.

Q. Your mill at Iola, Kansas; is that a base mill or non-base mill?

A. That is a base mill.

Q. What are your reasons for operating it as a basing mill?

A. The same, in principle, as they were in the case of
26679 Mason City, although it is different in degree. In the case of Iola we had at one time enjoyed a very substantial business in the Kansas territory, shipping from Mitchell, Ind.

As new plants were built and as these plants were established as basing mills, it became increasingly difficult for us to hold our position in that territory, and we were rapidly being driven out of it. Hence, when we had an opportunity to buy the Iola plant, and did so, we promptly

decided to continue as a basing mill in order to make it just as difficult as possible for the outside mills to get in.

Q. You told us this morning that you owned a mill at Oglesby, Ill. Is that a base or non-basing mill?

A. It is a basing mill.

Q. And what are your reasons for operating it as a basing mill?

A. Shipping out of our Mitchell, Ind., plant, we had enjoyed a very large business and a very strong sales position in Chicago and surrounding markets, but here, again, as new plants were built, we were rapidly being driven out of the territory and the one thing more than anything else that operated to drive us out was the fact that the Oglesby plant was operating as a base mill.

If the plants in that territory had operated as non-base mills we might, conceivably, have continued to ship cement to those markets from Mitchell, but the prices calculated with respect to Oglesby made the business unprofit-
26680 able and unattractive. That factor largely entered into our decision to purchase the Oglesby plant in order to be able to hold our position in the market, and we very promptly decided to continue the plant as a basing mill in order to keep in operation the competitive pressure that was driving out the mills from outside territories.

Q. You said you had a mill at Boyles or Birmingham, Ala. What is the difference?

A. Boyles is a railroad station located a short distance outside of Birmingham. It is the railroad station at which our plant is located.

Q. Well, Boyles or Birmingham describes your plant, then?

A. Boyles describes it accurately and Birmingham, approximately.

Q. Is it a basing mill or non-basing mill?

A. It is a basing mill.

Q. And why do you operate it as a basing-point mill?

A. Well, we built the Birmingham plant and put it into operation, as I recall it, in the early part of 1923. We built the plant because we were being driven out of the extreme southeastern markets which had formerly been served by shipments from our Lehigh Valley mills either by rail direct or by water and rail into the Atlantic ports.

A short time before we completed construction of the plant at Birmingham a competitive plant had begun
26681 operations in Birmingham, and that competitive plant operated as a non-basing mill. We decided that it was good business from our standpoint to establish our Birmingham mill as a base mill because at that time much, if not most, of the cement used around Birmingham was coming in from plants in the State of Tennessee, and we wanted to make it difficult for them to continue coming into that territory, or drive them out entirely, if we could.

Trial Examiner Norwood: Now, when you made that base, just what did you do; make a new price?

The Witness: Decided to quote prices out of that mill at a certain base figure at that mill, the result of which was to reduce the destination prices in the territory around the mill.

26682 By Mr. Leisure:

Q. You said this morning, if I am not mistaken, that the Metaline Falls was a base mill; is that right?

A. Yes; it is.

Q. And how long has it been a base mill?

A. Well, Metaline Falls, as we have discovered from hindsight, while it is an extremely good location for the manufacture of cement, is an extremely poor location market-wise. For a good many years we operated at Metaline Falls as a non-base mill, but in 1932 decided we wanted to make it a base mill, in order that we might be able to quote prices in at least part of eastern Wash-
ington that would make it as tough as we could for
26683 our competitors to reach even those markets.

Hence, we established it as a base and have continued it as one ever since.

26684 Washington, D. C.,
November 9, 1939.

26685 JOHN C. BOWEN thereupon resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Leisure.

Q. Mr. Bowen, I would like you to take up this morning the method of selling by your company.

You have told us yesterday that there came a time when Lehigh Company sold to dealers direct, instead of through distributors. When that time came, when you first sold to dealers, did you also sell cement direct to consumers?

A. Yes, we did, in some cases, sell directly to the consumers, although, at that time, the great majority of the business was dealer business, and the larger jobs on
26686 which the contractors were in a position to handle direct shipments were the exception rather than the rule.

Q. Was there any minimum quantity which you sold to your dealers?

A. Yes, the minimum quantity then was the same as it is now, that is, the carload lot, although, at that time, it was the custom of the dealers to carry much heavier stocks than they do now when railroad conditions and service has improved so that quick deliveries can be had.

Q. What time was this, Mr. Bowen?

A. I beg your pardon?

Q. What time was this? What time are you speaking of?

A. 1911 and 1912.

Q. Well, now, you told us that during that time, I think you said yesterday around 1912, the use of cement was mostly in small quantities.

A. That is true.

Q. Did this condition continue?

A. Yes. Beginning about 1912 there came a time when there were a great many more larger jobs which the contractors were in a position to handle by direct shipments, and an increasing number of cases in which we had to choose between getting the business by direct sale to the contractor or losing the good will of the dealer.

Q. Well, what happened then? What did you do?

26687 A. We found that our dealer relations were being badly disturbed in a good many cases, and spent a great deal of time trying to devise marketing plans whereby we could build up and hold the dealer good will.

Q. Well, to what extent, if any, in the early days, was it necessary to consider this good will of dealers?

A. We found it very necessary. In a good many of the territories which we took over from distributors we found that the Lehigh brand was not in very good standing with the dealers because distributors had been in the habit of making direct sales to contractors in a rather indiscriminate way.

It seemed to us that we could build up our business in a much better way by passing up some of the direct-contractor business to our competitors who might continue to quote direct, if by doing so we could build up a substantial dealer business, and we made our plans, directed our sales activities, in an effort to build up the dealer business to the greatest extent we could.

Q. You say you adopted that. I would like to know more about it. What is the policy that the Lehigh Company—well, let us say, first adopted for sales to dealers and for direct sales to contractors?

26689 A. The first policy we adopted was in the early part of 1913, at which time, in a great many territories, we adopted the method of selling direct to contractors on all jobs requiring over 7,500 barrels, while jobs requiring less than 7,500 barrels were sold only through dealers.

Trial Examiner Norwood: How much is a carload?

The Witness: The minimum carload at that time was smaller than it is now; it was 106 barrels, in 1912. Today it is 132.

Trial Examiner Norwood: I see.

By Mr. Leisure.

Q. Do you know—do you have any knowledge, Mr. Bowen, as to whether the Lehigh Company was the

26690 first to adopt this policy you just described?

A. I cannot say definitely whether Lehigh Company was or was not first to adopt such a policy. Our efforts in that direction at that time were confined to certain markets. We tried a method in one market, and if it proved successful we tried to extend it. The first methods

were merely the first stirrings of an effort to arrive at some definite sales policies, at a time when we were building up our sales organization to cover all territories directly, and at the same time were trying to formulate policies in which we could operate successfully.

Q. Well, what happened, then, with respect to this first quantity limitation, in solving your market problem?

A. It was not particularly successful. There were a good many cases in which contractors having jobs requiring, say, 5,000 barrels represented that the job required 7,500 barrels; whereupon, we sold it direct. When that happened the dealer involved accused us of having made the transaction knowingly, and thereby violating our promise to him to observe the policy about which we had told him.

Q. Well, did you take any steps to remedy that condition, Mr. Bowen?

A. Later on, in 1913, we increased the quantity to 15,000 barrels; that is, we sold direct only jobs that required 15,000 barrels. We took that step because we
26691 thought that 15,000-barrel jobs would be so few that they could readily be checked, and that the difficulties that we had had with the 7,500-barrel figure would be eliminated; but that did not prove a great deal more successful.

Q. You have been describing the practice in the East, have you not?

A. Yes, the—

Q. Did you follow the same practice in the western territtories that you were following in the East?

A. In our western territories the development of sales practices developed a little bit more rapidly than in the East, because we had begun marketing through our own sales organization in the West several years earlier than in the East.

Q. Well, you told us about 1911 and 12, and 1913. Take as late as 1914, did your practices in your western territory differ from your practices in the East?

A. Yes, they did differ to some extent throughout most of our western territory. By 1914 we were following a rather general policy of quoting contractors in all cases 5 cents per barrel higher than we quoted to dealers. That method was observed regardless of the quantity involved,

and it was, therefore, in that western territory that the first program of general dealer protection developed.

Q. When you say "general protection," what do you mean by that, Mr. Bowen?

26692 A. I mean by "general protection" the plan whereby contractors are in all cases quoted a higher price than is quoted to dealers.

Q. Mr. Bowen, you used the phrase, there, "general protection," and I just asked you to explain what you meant by using that phrase, and you told us.

26693 What was the attitude of your own company with respect to that phrase? Is that a phrase of your own?

A. It is a phrase of our own as far as our own conception of the meaning and application of the phrase. To us it means a condition of affairs in which we do not limit our sales to dealers but in quoting contractors direct at a higher price than dealers, are always prepared to sell contractors directly at that price if they choose to buy direct rather than through the dealer.

Q. I see. Well, Mr. Bowen, did you have that same policy with respect to the sales to the United States Government?

A. No, the United States Government was always sold direct at the same price that we sold the dealers.

Q. What about the railroads?

A. The same condition applies to railroads. The United States Government, State Governments, and railroads have always been considered in a class by themselves; in a class which we do not attempt to give the dealer protection.

Q. Well, what was your policy, then, in the East in 1914?

A. During the greater part of 1914 we had no definite policy in the East and were merely following a policy of expediency.

Q. You say "expediency," Mr. Bowen. What are the facts, if you had a good dealer in the market? Did you quote a contractor?

A. That is what I meant. We decided each sit-
26694 uation as it arose. If we had a good dealer in the market we sometimes would not quote a contractor direct, or if we felt we could quote a contractor directly

without too seriously interfering with our dealer relations, we did that.

Q. How did that work out, Mr. Bowen?

A. It worked out very badly. We found we were getting into very bad repute with the dealers and that we had a great deal of difficulty in carrying out the program we had undertaken in building up our dealer business. Even in the markets where we did not quote direct, the dealer heard about our sales in other markets, and would not buy from us.

Q. Then did your company make any change in its sales policy in 1914?

A. Yes, we did. In the latter part of 1914 we adopted a definite policy and from that time on, so far as I know, the Lehigh Company has always been on record with its trade in a definite way as to what its policy would be.

Q. Well, will you tell us more about that? What was the policy which you put into effect in the latter part of 1914?

A. The first step in that definite policy occurred late in 1914 when we adopted the policy, first in New England, of selling all jobs requiring less than 5,000 barrels only through dealers. We notified all the dealers in New England about this policy; committed ourselves to its observance.

The dealers liked it, applauded us for it, and gave 26695 us a lot of business as a result of it.

Q. Do you recall, now, whether your competitors followed in adopting this policy in the latter part of 1914?

A. No, there was no great display of following that policy on the part of competitors. The policy, in a large measure, tied our own hands, and most of our competitors seemed to be content to sit on the sidelines and see how the policy might work out.

Q. What, if anything, did you do next, then, with respect to developing your policy?

A. The successful operation of the policy, so far as its effect in our business was concerned, encouraged us to take further steps, and we then increased the minimum quantities, the successive increases being, as I recall it, to 10,000 and 15,000 barrels.

Q. What happened with respect to that; this policy of dealer protection? What happened then?

A. The changes in policy were equally successful so far as helping us to build up our dealer business and the result encouraged us to take a still further step, which we did in the early part of 1915.

Q. What was that?

A. That step was to make a definite announcement that throughout the entire territory in which we did business our prices to contractors would be 5 cents per barrel
26696 higher than our prices to dealers, irrespective of quantity.

Q. How did that work out, Mr. Bowen, as far as your dealers are concerned?

26697 A. The policy was very acceptable to the dealers.

Trial Examiner Norwood: Did your company continue that to the present time?

The Witness: No. There have been various changes since, Your Honor.

By Mr. Leisure:

Q. As you have told it, Mr. Bowen, this seems to be your first general dealer protection plan; is that correct?

A. It was the first time in which we had a policy which applied in exactly the same manner in the entire territory we covered.

Q. Now, going back to that time, can you tell me as to this first general dealer protection plan, whether or not your competitors followed it?

A. As I recall it, most of them ultimately did, although it happened over quite a period of time.

We were greatly helped in establishing this plan throughout the eastern territory; making its successful, because at the time we published the plan prices throughout this entire eastern territory were extremely low. They had gone so low that only the Lehigh Company and perhaps one or two other companies were continuing to quote at the prevailing market price for both current shipments and future deliveries.

Most of our competitors were quoting the low price, only, for current delivery; quoting a somewhat
26698 higher price on future contracts.

It was possible for us, therefore, to quote contractors 5 cents per barrel higher than it was to dealers and still continue to get a considerable amount of contract business as against the competition of companies who were

continuing to quote contractors directly. This fact helped us a great deal, in getting the plan established.

Q. Now, as to that, Mr. Bowen, did this new policy have any effect on the persons whom you recognized as dealers?

A. Yes, from the time we adopted the policy it became necessary for us to distinguish between those customers who were dealers and entitled to the price we quoted dealers, and those whom we considered as contractors.

26699 The problem was complicated by the fact that there were a good many buyers who belonged in both groups—that is, who were both dealers and contractors. It became necessary, therefore, and we have always since continued, to have a conception of what constituted a dealer, the man who was entitled to the price we quoted dealers.

Q. Well, just why, Mr. Bowen? What was the purpose of defining a dealer?

A. Simply that we might be able, in good faith, to apply the policy which we had announced, and which we had assured the dealers would be observed by our company.

Q. I see.

Well, how long did you maintain a 5-cent differential between consumer and dealer business?

A. The 5-cent difference between dealer and contractor prices continued for about a year. In the early part of 1916, after costs had increased considerably and prices advanced a great deal, the margin was made 10 cents per barrel.

Q. Ten cents per barrel?

A. Yes.

Q. How was this increase initiated, do you know?

A. I cannot say definitely that it was initiated by our company, or, as a matter of fact, by any other company. It developed principally out of the fact that in most markets by that time dealers, because of the higher prices of materials, were quoting 10 cents per barrel higher prices than their costs, and the manufacturers who were
26700 seeking dealer business made no effort to disturb those quotations by dealers.

Q. Well, now, you have told us about this general plan you had in, I think it was, 1914. Was there any other

change? We will take during that period—during the war period, 1917—did you have any further change?

A. Well, by 1917 we were in the war. Prices were determined by the War Industries Board, and there were a great many restrictions on the use of cement, so that problems of dealer policies and the marketing plans were of secondary importance.

Q. Well, was there any later development in your policy after the war,—in the 1920 period, for instance?

A. By 1920 we had a great car shortage, and extreme shortage of materials. This condition brought with it sharp increases in costs and sharply increased prices. It was a time in which the question of the buyer was how to get cement, and if a dealer could get deliveries he could readily get most any price within reason for them, so that during that time there were no great problems involved in matters of dealer marketing policies.

Q. And then after that time, after that period, what was the situation then?

A. From 1921 on to about 1926 there was a period of tremendous development of highway construction. During the latter part of this period the 10-cent dealer 26701 margin broke down almost completely.

Q. Well, what do you mean? In what manner did the 10-cent dealer margin break down?

A. Well, this was a period in which we felt, to a much greater extent than ever before in our experience, what we now readily recognized as a fluctuating market. There were a great many large highway projects coming up at isolated locations where the dealers were ill-equipped to handle the work, and where a question of the value of the dealer service was somewhat debatable.

A good many of our competitors who did not have as great a stake in the dealer business as we had encouraged their dealers to quote prices very much below the 10-cent margin. Sometimes a contractor might go to a man who was not directly engaged in the building material business and explain to him that if he would quote a low price he could get a very nice order, and having done so would sell the job through such a man as a dealer.

All of this affected our business quite adversely, but we had spent a good many years in building up our dealer trade. We had in most markets what we thought was the

best dealer, he was a man who knew his costs, who was not willing to do business except on a fair basis of profit; when he was unable to meet the competition in his market and lost business, we lost it, too.

26702 There was a great increase in cases of this kind, and by 1926 we had decided that the situation was such that we must make some change in policy if we wanted to hold our position.

Q. Well, what did you do, Mr. Bowen?

A. During the summer of 1926 we adopted a new policy, which we called "dealer discount method of selling." It was merely a matter of quoting our prices with a condition that in addition to the usual cash discount we would grant the dealers a trade or dealer discount of 10 cents per barrel, which was not given to contractors when we sold contractors direct.

Q. Mr. Bowen, the Commission has offered in evidence Commission's Exhibit 971-33-0, 34-0 (showing document to witness).

26703 Referring to the third paragraph of that exhibit, in the righthand column on page 11, is the trade discount plan mentioned there as effective August 17, in this Commission's exhibit, the plan to which you have just been referring, which is already in evidence?

A. Yes, the reference on page 11, and the statement reproduced on the following page, are the plan to which I have made reference.

Q. Just call off the page, will you, so we may have it?

A. Page 12.

Q. Sir?

A. The reference on page 11, and the statement reproduced on page 12.

Q. Thank you. And it is all in evidence.

A. (No response.)

Q. Now, do you recall, Mr. Bowen, how you introduced that plan?

A. Yes, we introduced it by sending a statement to all our trade, and accompanied that statement by new quotations to which the new plan applied. In our western and southern territorities these new prices were 10 cents per barrel higher than the prices we had just previously quoted to the trade, and with the additional 10-cent dealer discount the effect of those quotations was to give the

dealer the exact same net cost for cement as he had
26704 had in our previous quotations before the plan was put into effect.

Q. I see.

What did you do in the East?

A. In the eastern territory we proceeded somewhat differently because there we were confronted by a competitive situation arising out of the fact that some weeks earlier one of our competitors, the Lawrence Cement Company, had issued public quotations providing that its 10 cents per barrel cash discount would be granted for payment within 30 days from the dates of invoices, as compared to our discount period of 10 days.

We didn't want to accept that longer discount period if we could help it because we thought it was decidedly unsound.

Q. Well, why did you disapprove of this measure by Lawrence?

A. Because we thought it would have increased our credit risks to a much greater extent than we wanted to face.

Q. What did you do then?

A. In order to attempt to deal with that situation in the territory in which we were in competition with the Lawrence Company, we quoted our dealers the same prices as we had quoted them before and allowed the added 10-cent dealer discount from that price, the net effect being to have cement cost the dealer 10 cents per barrel less than it had cost him before.

At the same time we extended our cash discount
26705 period to 15 days from 10 days. Our object in doing this was to make it necessary for the Lawrence Company to make some move.

They might, conceivably, have met our prices and continued their discount period at 30 days, in which case it would have been up to us to decide again whether we wanted to meet their discount period or again move with our price; or they could meet our price and meet our discount terms. What they did do was the latter. They met our price and our discount terms and the situation ended the way we wanted it to.

Q. Well, was your action, the institution of this trade discount, any great change, any revolutionary change, in your marketing methods?

A. No. It involved no great change in principle. It merely served as a means of giving the dealers an opportunity to get a fresh start. If they were strong enough and good enough merchants they could hold the full dealer discount for themselves; and if they succeeded in that we thought the policy would be most beneficial.

Q. Well, how did this trade discount plan work out?

A. For a while it worked out quite satisfactorily, and our dealers were again able to get a goodly amount of contract business, but as time went on the old evils again came into the field, and by 1929 or 1930 the situation was about as bad as it had ever been.

26706 Q. I would like to have you address your attention for a moment, Mr. Bowen, to your terms of payment. What are your terms of payment today?

A. At the present time they are 10 cents per barrel discount on invoices paid within 15 days of their dates. Invoices not discounted are payable 30 days net.

Q. How long have you sold cement on those terms?

A. Those have been our terms since the middle of 1926, except that from August, 1926, to November, 1930, we also offered to dealers the dealer discount to which I referred, and for a few months in 1930 and 1931, after the elimination of the dealer discount we offered to dealers a dealer service payment of 5 cents per barrel payable at the end of the calendar year.

Q. And now you said since 1926. Was it any different before 1926? What were your terms then?

A. Prior to August, 1926, our terms were 10 cents per barrel for payment in 10 days.

Q. And how long had those terms been in effect, if you know?

A. They had been in effect from some time in the early 20's when the discount was increased from a lower figure; from 5 cents to 10 cents.

Q. Mr. Bowen, to what extent, if any, are your terms of payment the same as your competitors?

A. As far as I know, they are, at the present 26707 time, the same. Every change in discount terms conditions that has taken place since 1915 has either offered the dealer a larger discount or a greater period of discount time, so it has been necessary, as these changes have been made, to meet each one of them as it arose, or else do what we did in August, 1926; endeavor to offset

discount terms, that were apparently more attractive to the buyer, by a price reduction.

Q. I just recognized, Mr. Bowen, that I neglected one thing. Before I leave this trade discount plant I would like to return to that for a moment, before we go on. You said that the operation became unsatisfactory; is that correct?

A. That is correct.

Q. I didn't ask you to explain in what manner it became unsatisfactory. Would you mind telling us?

A. During the latter part of the period to which I referred, that is, the period between 1926 and 1930, and under the cut-throat competition that existed during that period there was an increasing number of cases in which manufacturers, finding that dealers' quotations reached such low points that their dealers were unwilling to carry out the normal dealer functions, undertook to relieve the dealer of the performance of one or another of those functions.

Usually, the one that they relieved him of was the one of credit responsibility, carrying the account, and usually this took the form of what we call signed contracts.

26708 The manufacturer either made a formal assignment of the contract between the dealer and the contractor, or else merely made a verbal agreement with the dealer that he would not be held responsible for the account; that the manufacturer would undertake that responsibility, undertake the collection of the invoices.

Methods of this kind increased greatly in number and had a very adverse effect on the ability of our dealers to get business for our brand of cement.

Q. Why was Lehigh so concerned about that?

26709 A. Because we steadfastly maintained the position that the dealer's function was an entirely separate and distinct thing from our function, and that any sale made by a Lehigh dealer must be one in which he carried out all those functions of handling the business, carrying the account, and assuming the credit responsibility.

Naturally, our dealers, operating under that sort of restriction, were greatly handicapped in their efforts to get the larger contract business as against the competition of the sort I have described.

Q. Well, during that period, Mr. Bowen, did your

company have any policy with respect to kinds of work you did sell direct and the kinds of work you did sell through dealers?

A. No, we had no such policy because the dealer discount plan was based upon the principle that we were at all times ready to sell a contractor direct if he chose to buy, but we would not give the contractor the 10-cent dealer discount.

Q. Did you sell cement to any buyers other than dealers at the dealer prices?

A. Yes. Again, the United States Government, State Governments, and railroads, were at all times, during that period, given the same discounts as we were giving to dealers.

Q. What about your competitors during that period of time? Do you recall whether or not they made any move relating to these discounts?

A. Yes, I recall that during the summer or fall
26710 of 1929 one of our competitors, the International Company, issued quotations to the trade which did not provide for any trade or dealer discount.

Q. And the Lehigh Company followed that International plan, in 1929?

A. No, we did not.

Q. Why not?

A. Because we had spent so much time and effort building up dealer business and had what we considered an outstanding position with respect to dealer business, we thought that the elimination of trade or dealer discount was bound to lead to general direct selling, and we did not want to face that sort of a situation without making every possible effort to prevent it.

Q. Well, what did you do?

A. What we did was to devise and put into effect, in November, a new plan of marketing which we called a dealer service payment plan.

Q. I would like to interrupt your testimony at that point just long enough to show you an exhibit. (Indicating) Is the exhibit which I now show you, being Respondents' Exhibit 630, by number, the plan to which you have just been referring?

26711 A. Yes, this is a copy of one of the announcements we sent out when we made this plan effective.

Q. Well, now, without reading anything from the ex-

hibit, what, in your experience, did you find to be the essential features of the plant?

Mr. Wooden. Your Honor, I wish to object to the question as merely calling for unnecessary cumulative proof. Every bit of this witness' testimony, the essence of it, has been covered by the company's own pamphlet entitled "Twenty Years of Dealer Policy," and which is in evidence, and he is not adding anything to it, or explaining anything to it at all. He is just reading it; that is all.

Mr. Brick: Your Honor please, the book to which Mr. Wooden and Mr. MacIntyre have given so much attention, was published in 1931, and, naturally, it contains no policies of the company subsequent to that date.

We are now beyond that point in this man's testimony concerning his market policies.

26713 A. The essential features—the chief essential features—of the plan. I would say, were, first, the plan provided for payment to dealers at the end of each calendar year—

A. —five cents per barrel.

26714 A. (Resumed.) —on all the cement we had invoiced to the dealer during that year. This 5-cent per barrel payment was not to be in the nature of a profit, paid by the contractor to dealer, but was intended as a payment by us to the dealer in consideration of the dealer's service in providing us an outlet for our product.

The second feature of the plan, which I consider essential, was that our contracts provided that the 5-cent per barrel payment to the dealer was conditioned upon the dealer's representation that his sale to the contractor had been made at a price not lower than our price to the contractor had been for the same time and place.

By Mr. Leisure:

26715 Q. Well, now—

Trial Examiner Norwood: If he had sold it higher, then he would not have received this bonus—I mean, if he had sold it lower?

The Witness: That is correct. If it developed that his representation had been incorrect, and that his sale had actually been made at a lower price than we had quoted the contractor, then, under the conditions of the contract he would not be entitled to receive the 5-cent payment.

Trial Examiner Norwood: I see.

By Mr. Leisure:

Q. Well, in what way, Mr. Bowen, did you believe, or anticipate, that the dealer service payment plan would operate more successfully than the trade discount plan?

A. We felt confident that the plan would be accepted by our dealers as giving them hope of a more profitable business than they had had before. We thought that with the dealers assured payment of 5 cents per barrel from us, plus the additional profit that he might secure from the contractor, for service rendered to the contractor, that dealers generally would discover that the contract
26716 business was more attractive to them than it had been in the past. We hoped that the plan would be so accepted by dealers, and that a favorable reaction would lead to having many of our competitors, if not all of them, follow us in the acceptance of the plan, so that it might become successfully established.

Q. Well, what happened?

First, let me ask you: At the time that you introduced it was your price the same—was there any change in your price at that time?

A. No. When we announced the plan, we—part of the announcement consisted of a quotation to the dealer in which we quoted a price which was slightly lower in its final cost to the dealer than our prices had been previously.

For instance, if your price at a given destination had been $2 per barrel, subject to the dealer discount, and the cash discount, that meant that the final cost of the cement to that dealer was $1.80 per barrel. To such a dealer our quotation under the new plan was at $1.92 per barrel, subject to the usual cash discount of 10 cents per barrel, and to the 5-cent per barrel service payment at the end of the year. That meant that the dealer had an immediate net cost of $1.82, and an ultimate net cost of $1.77.

Now, we felt that this difference would be sufficiently great that dealers would think that our price, with its accompanying deductions, was more attractive than
26717 the prices quoted by our competitors, and that that would compel our competitors to make some sort of a move. We hoped that that move would be to accept our prices and to accept the method that we had announced, but, in any event, we felt confident that our level of prices would require some sort of a move on the part of our competitors.

Q. What did happen, Mr. Bowen?

A. The plan met with a rather mixed reception. Some dealers were heartily and enthusiastically in favor of it; some recognized it as being an improvement over the conditions under which they had previously been working; but other dealers criticized the plan quite strongly because, we felt, that they misunderstood its purpose and the way it operated. A good many of our competitors followed our prices and adopted our plan. A good many others did not adopt the plan. Some of those competitors made reductions in their prices, continuing to offer the dealers the dealer and cash discount as they had theretofore, and we found ourselves in a position where we had to make some move.

Mr. Wooden: Now, Your Honor, I just want to call your attention to the fact that every bit of that testimony is nothing but a repetition of what is contained in this booklet put out by the Lehigh Company, Commission's Exhibit 971-33-L.

Trial Examiner Norwood: Well, I will say to the
26718 Counsel for the Respondents that it is futile, if is doing no good, because this case is going to be studied, and the exhibits will be studied, and it is not as if a jury were here to get a different impression from this man's verbal recital, but—

Mr. Leisure: It is impossible, when we have exhibits in evidence, without at times having something slightly repetitious.

26723 By Mr. Leisure:

Q. How did this dealer service plan work out, from your viewpoint, Mr. Bowen?

A. It led to a very confused condition that continued for some months. The problem with which we had to deal was whether we would retreat from a policy—

26724 A. The problem with which we had to deal was whether we would retreat from a policy in which we very strongly believed, or whether we would make further efforts to have that policy become established.

We decided that we did not want to give up the policy without making further efforts, and during the following three months made a number of price reductions which involved meeting the prices published by our competitors subject to the dealer or trade discount, but continued to

have each one of our prices subject to the additional 5 cents per barrel payment at the end of the year.

Q. Mr. Bowen, did there come a time when you finally abandoned this plan?

A. Yes. By March of 1931 we had reached the conclusion that the plan couldn't hope to be successful. We had tried every way we knew how to enlist sufficient dealers for it to endeavor to press our competitors to
26725 follow the plan, but that hadn't worked out.

Many of our competitors who had at one time adopted the plan discontinued it and others never adopted it. We just felt we couldn't go on with it any further.

Q. What discounts did you allow after March 16, 1931?

A. After March 16, 1931, we allowed only the cash discount of 10 cents per barrel with no additional deductions.

Q. Well, now, after you abandoned this plan, what did you do with your dealers, Mr. Bowen?

A. We merely followed the statement made to the dealers in March of 1931 which, in its general terms, assured the dealer that we would protect him to whatever extent our competitors might permit.

Q. How much did this dealer plan cost you, then?

A. Well, we figured that the various price reductions we had made from November of 1930 to late February of 1931 had cost us several million dollars. We had let the trade know about the extent of our efforts in that direction, and had done everything within our power to convince them that we believed this plan to be for their interest as well as our own.

26726 Q. Were there any price moves that accompanied the elimination of the dealer service plan on March 16, 1931, Mr. Bowen?

A. No. When we issued our quotations in March 16, 1931, we merely quoted destination prices 5 cents lower than we had quoted theretofore, but since we did not accompany those prices with the 5-cent dealer service payment the result was to give the dealer the same cost as he received before we had issued the quotations.

Q. You said you finally abandoned the plan altogether, Mr. Bowen. Did the elimination of this plan affect your prices to contractors?

A. Yes. From the time the plan was eliminated, whenever we sold to contractors we sold them at the same price, at the same price we sold dealers.

Q. All right.

Now, leaving that period and going on: In March, 1931, after you abandoned all forms of this dealer protection you have been telling us about, did your company adopt any policy of determining the kinds of work you would sell direct and the kinds of work you would sell through a dealer?

A. No, we merely followed the lines of our letter of March 16, 1931; sold through dealers when competition permitted and sold direct to contractors when we found in certain cases that our competition was on a direct basis.

26727 Q. What happened with respect to your competitors as to that? Do you know whether or not any statement of policy regarding the kinds of work which were sold direct were issued by any of your competitors at that time?

A. Yes. At about that time a good many of our competitors had issued statements in policy which included provisions for selling direct on certain classes of work.

Q. Do I understand that the Lehigh did not issue any such policy?

A. We did not.

Q. Why, Mr. Bowen?

A. We felt that our competitors' statements of policy were decidedly evasive and full of loopholes, and we thought that it was better strategy for us to issue the kind of statement we did which, in effect, said to the dealer: "We don't think that these competitive statements of policy amount to anything. As far as we are concerned all we can say to you is that we will work with you and protect you to whatever extent our competition permits."

We thought it was good strategy to issue such a statement, and it proved it was; it worked out that way, rather than issuing a statement, as some of our competitors did.

Q. You did, then, issue such an announcement. I mean, as you have been describing what you thought was a better policy, you did issue such announcement: Is Exhibit
26728 669 the sort of an announcement that you have described?

A. Yes, this is a copy of the announcement we made to dealers on March 16, 1931, and outlines the method of procedure to which I have been referring.

Q. Mr. Bowen, Respondents' Exhibits 664, 666, and 668

appear to be other Lehigh Portland Cement announcements. Are those also ones which you have just described (handing documents to the witness)?

A. Yes, they are copies of three announcements made by our company to dealers during February, 1931, and which were accompanied by quotations meeting our competitors' prices, but continuing to make those prices subject to dealer service payment, as I have explained before.

Q. Do you recall at this time, Mr. Bowen, whether or not after March, 1931, whether or not there was uniformity in the practices of the various manufacturers with
26729 respect to the kind of work that they might sell direct, and the kind of work that they would sell through a dealer?

A. No, there was no uniformity.

For a time there was considerable increase in the amount of work sold direct, and there was a considerable amount of difference in this respect as between various competitors.

Q. You mean by that were there cases where contractors were quoted direct by some manufacturer and not by others?

A. Yes, there were a great many cases where contractors were quoted direct by certain manufacturers on certain work that were not so quoted by others.

Q. Well, following along in your experience, then, Mr. Bowen, what happened, if anything, after this situation? I am now referring to succeeding lettings of work.

A. Beginning in the spring of 1931 there was considerable confusion, as I have said, and a great diversity of practice between the various manufacturers. A manufacturer refrained from quoting direct on a job because of his dealer connection while other manufacturers who
26730 either because they had no dealer connection in the market concerned, or had no particular stake in the dealer business, there, undertook to quote direct.

Q. How long did this situation continue, Mr. Bowen, if you know?

26732 A. It underwent a gradual change beginning late in 1931 and continuing into 1932.

Q. And what was that change, Mr. Bowen?

A. The nature of the change was that under competition manufacturers' practices gradually came to show some sort of a pattern. In most of the larger markets jobs were

sold through dealers, because the dealers in those markets were strong enough to get from the manufacturers protection in their respective markets. That strength was based upon the ability of the dealers to penalize manufacturers by not placing business with them if they sold direct, and that condition applied not only to direct sales that might have been made in the market of the particular dealer, but also to conditions where the dealer discovered that manufacturers were selling direct in adjacent or nearby markets.

26733 Out of that sort of situation we had, by the early part of 1933, a fairly general practice of work located in the urban communities being sold through dealers, while work outside of the urban communities and in the more isolated territories continued to be sold direct.

Q. Well, as to the sales direct, what was your observation, were there more sales as time went on in the direction of sales made direct to contractors between 1931 and the time of, say, the N.R.A. Code, or fewer direct sales?

A. I would say that during the latter part of the period to which I have referred the tendency was in the direction of fewer direct sales.

Q. Now, I would like to take up another subject matter, Mr. Bowen.

Can you tell us in what respect, if any, Article XI of the N.R.A. Code changed the practices relating to direct sales and sales through dealers?

A. It involved comparatively little change from the practices that existed generally before the article adopted. There was some variation in practice that we observed in various parts of the country, but, by and large, Article XI was an attempt to state the practices generally prevailing over the country as a whole.

26734 Q. Mr. Bowen, when the N.R.A. Cement Code became effective, to what extent, if any, was it necessary for you to make any changes in your selling policy in order to conform to Article XI of the Code?

A. Only to a very slight extent, because we had been operating, prior to the adoption of the Code, without a definite stated policy, but merely meeting competition as we found it. Our practices had varied slightly in the different regions in the country, according to the competition we found there.

26735 After Article XI was adopted our practice was, of course, uniform in all parts of the country, because we, of course, were under the obligation to observe the Code.

26738 Q. Mr. Bowen, the record shows that Article XI was suspended in January of 1934; what happened then as far as Lehigh Company was concerned?

A. As far as the Lehigh Company was concerned, we were then placed in exactly the same position as we had been prior to the adoption of the Code, and our basis of operation was again on the basis of the statement we had made to the trade in March of 1931.

Q. What was the policy of your company during this period?

26739 A. The only policy we had then—

Q. I mean, was that the policy of your company?

A. —was the policy to sell through dealers to whatever extent our competitors might permit.

Q. I see.

Well, have you been describing the 1931 policy? Let me ask you, how did the 1931 policy operate?

A. Its operation during that period was quite simple and quite effective. When we discovered one of our competitors quoting direct to a job, we went to the—to our dealer in the market, showed him our statement of policy, or lack of policy, explained that under our dealer service payment plan the dealer would have been assured of a profit on this business, and that the fact that he was unable to get a profit on it now was due to our competitors' policies, and not to ours.

Under those circumstances, in most cases, the dealer urged us to meet the direct competition, get the business if we could. The result was that we could get a great deal of business direct without injuring ourselves with the dealers, but rather helping ourselves with them.

Q. Do you recall at the present time, Mr. Bowen, whether or not any steps were taken in connection with an effort to have Article XI reinstated in the Code?

A. Yes, I know that there were numerous discussions at the request of the N.R.A. between dealers and manu-

26740 facturers, all in an effort to arrive at some substitute for Article XI that would be acceptable to all parties involved, and those discussions, within a reasonable time, seemed likely to produce a result that would be acceptable to all the interests concerned.

Q. What did you observe, then, with respect to their attitude—in your experience, with respect to their attitude—towards the Code? The dealers, I mean.

A. My observation was that the dealers who had been hostile to Article XI very quickly changed their viewpoint as to the elimination of Article XI, and were not only willing but anxious to have some sort of an article restored.

Q. Did the Lehigh Company take any action of its own with regard to the reinstatement of Article XI?

A. Yes, we did. In December of—along about December of 1935 we—by December, the latter part of 1934, and the early part of 1935—we came to the conclusion that it would be a very good move on the part of the Lehigh Company to once again announce a definite sales policy of its own.

Q. Was that independent of any action with respect to Article XI, or did it have reference to that?

A. By that time it seemed to us that the delays in re-establishing Article XI in the Code were apt to be interminable, very scant progress seemed to be made, we had very little information as to what that program was, and decided that we could make a good stroke by formu-
26741 lating and announcing the policy of our own, that the adoption of such a policy was likely to be received favorably by the dealers, and that that favorable reaction might cause the dealers to press our competitors to do likewise, even though the movement that we made might have proven unsuccessful if we had not been followed by enough manufacturers to make the policy succeed, we would still gain a great deal of credit with the dealers for trying, and hoped that that would bring us increased business.

Following this line of reasoning we decided early in 1935 that we would issue a policy.

Q. And did you then issue one, Mr. Bowen?

A. Yes, we did, February, 1935.

Q. I want to call your attention to a Commission's exhibit, 643-B and C, and ask you if that is the policy which you have just described (handing document to witness)?

A. (Witness examines document) Yes, it is a copy of one of our announcements to the dealers, establishing this policy.

Q. I neglected to ask you, Mr. Bowen, when you first started talking about that policy, whether or not the is-

suance of it was preceded by any discussions between the Lehigh Company and any of its competitors.

A. During the time, immediately after the elimination of Article XI, there were a good many discussions between manufacturers and dealers on the subject of a revised article, and the Lehigh Company participated in
26742 some of those discussions, but our action in February, 1935, was not preceded by any discussions with either competitors or dealers. It was an action taken entirely on our own decision, and we had no idea as to whether any competitor would follow it.

Q. What was the purpose of issuing this, Mr. Bowen, at that time,—that is, your reason for having any definite statement of policy?

A. Well, ever since 1914, and up to 1931, the Lehigh Company had been on record with its trade, with definite statements of policy. We were anxious to get back to that position again, and felt that 1935 was a good time to adopt the policy, even though we might tie our hands with respect to certain classes of business, it would more than make up for that in dealer good will, and we also felt that if the policy met with a favorable reception on the part of the dealers, that would be very apt to press our competitors to adopt similar policies, and thereby maneuver our competitors into fighting on ground of our own choice.

Q. Who prepared this policy, Mr. Bowen, that of February 20, 1935?

A. I did.

Q. In collaboration with any other executives of your company?

A. I discussed the matter with all of the executives of our company, having anything to do with prob-
26743 lems of sales and distribution, and listened to their suggestions and ideas.

Q. Well, what I am really getting at, is how did you decide on the provisions which you decided to include?

A. Well, the preparation of the policy was a comparatively simple matter. I had already explained how during the period from 1931 to 1933 competition had hammered into existence fairly general practices throughout the territory, which were reflected in Article XI; so when we came to prepare the policy I merely included such practices as I had felt from the information we had received on conditions in the field to be reasonably general and to reflect

the conditions which competition had brought into existence:

Q. Well, let me ask you: Did you distribute copies of your sales policy of February, 1935?

A. We did; to all the dealers we were selling and all we were trying to sell.

26744 Q. To whom did you send them?

A. I have just said to all the dealers we were selling, and all we were trying to sell, totaling, in all, thirteen or fourteen thousand.

Q. Did you apply this February, 1935, policy, to all territory served by your company?

A. To all territories except the State of Florida.

Q. Do you recall, Mr. Bowen, whether your competitors followed the policy or not?

A. Yes, I do. It was very readily apparent that the policy was being favorably received by the dealers and would react greatly to the Lehigh Company's advantage, so there was a great rush on the part of competitors to get on the band wagon.

Q. How long did this policy of February, 1935, remain effective?

A. In the form in which it was issued it continued until April, 1935, when we made some slight revisions.

Q. Now, the Commission has offered in evidence here, an announcement by your company dated April 6, 1935. That is Commission's Exhibit 2262-A and B (handing document to witness). I just want to call it to your attention. Is that one of your announcements which you just referred to?

A. Yes, it is a copy of one of our announcements of the revised policy issued April 6, 1935.

26745 Q. And that is the one you just referred to?

A. The one to which I have just referred; yes.

Q. Who prepared it, Mr. Bowen?

A. I did.

Q. Can you tell us why you happened to issue a revised statement in April of 1935?

A. Our February statement of policy endeavored to set down conditions that we felt to be representative of the actual conditions generally found in the field. Still, it was of necessity tentative in character. It met with a very excellent reception and there was general approval of our action in initiating the policy.

A. There was, however, a number of cases in which we received suggestions or criticism from dealers that certain points of the policy were not, well, applicable to the actual conditions existing in the territories. There were also one or two points of the February statement that were rather loosely worded.

We decided, after a period of several months, that some revision of the policy was warranted and was desirable. We undertook to make it.

Q. With whom, if anyone, did you consult in connection with the preparation of your April, 1935, policy?

26746 A. As before, I consulted with all of the executives of our company having anything to do with sales and marketing. I took into account all the suggestions and criticisms that they had received and as they had been reflected in the reports received from our sales organization all through the territory.

Q. Do you know, Mr. Bowen, whether your competitors followed this revised policy, or not?

A. Yes, to the best of my recollection, most of them did; followed almost as promptly as they followed the February announcement, although there has been considerable variation in the degrees to which competitors have observed their statements of policy.

26747 Q. Mr. Bowen, you told us you wrote this April, 1935, announcement. What was your observation? Was it less favorable to your dealers or more favor-
26748 able than the February, 1935, policy?

A. It was somewhat more favorable to the dealers.

Q. In what respects?

A. In that it provided for sale through the dealer of somewhat more business than the February statement had provided.

Q. Well, from the standpoint of the Lehigh Company, has its policy of April, 1935, proved satisfactory? If so, in what respect, Mr. Bowen?

A. Yes, it has proven very satisfactory. It has given us approved standing with the dealer trade and increased business. It permits us to point out to the dealer that to whatever extent he is protected on the sale of cement at the present time it is because of the policy initiated by the Lehigh Company.

Ever since 1915 it had been our effort and desire to put

ourselves on record with our trade as to just what policy they might expect from us, and with that sort of background we were extremely anxious to get back to a definitely stated policy at the earliest possible moment.

It is our belief that our customers have a right to know the policy on which they can expect us to operate. We don't believe that it is good business to extend one sort of treatment to one dealer and a different sort of treatment to some other dealer, and—

26749 Q. Earlier, you stated that you did not apply your 1935 marketing policy to Florida.

A. That is correct.

Q. Why was that?

A. Because at that time there was a dealer organization operating in Florida which had made certain requests on us for pledges of cooperation with their activities which we considered were illegal and wouldn't give those pledges.

As a result, we were being considerably penalized by the loss of business from the dealers connected with this organization and the only way we could protect ourselves was to sell cement to anyone we could. We didn't want to tie our hands as against this sort of treatment by committing ourselves to any definitely stated policy in the State of Florida, and did not extend the policy to that State.

26750 Q. Did you ever announce a marketing policy in Florida, Mr. Bowen?

A. Yes, we did.

Q. When?

A. As I recall it, in the latter part of 1937.

The witness identified Resp. Ex. 1113 as a copy of a statement sent by Lehigh's Birmingham office to dealers in the State of Florida applying to that state the sales policy that Lehigh was previously observing in all other territories.

Q. Why did your company extend this policy to
26751 Florida, Mr. Bowen?

A. By the end of 1937 the dealer organization to which I had referred had gone out of existence. There was still some hostility on the part of some of its former members, but this gradually had worn off and we were beginning to get a representative dealer business. We were quite anxious to be operating on the same policy in all territories, in accord with our general practice, and decided

in December, 1937, that the time was ripe to extend the policy to Florida, that even though we might be losing some business temporarily we would be the gainers in the long run.

Q. Now, Mr. Bowen, there has been considerable testimony here in the direct case by the Commission, as well as the Respondents' case, as to the importance of dealer business to manufacturers. Without going into that subject generally, I wonder if we can cover it in just one question: Have you found in your experience in manufacturing and selling cement— Tell us whether or not you have found the dealer business to be very important to you?

A. We have discovered from the beginning of our own direct sales operations that to the extent that we could build up our dealer business that business would be on a strong foundation, the dealer outlet once sold continues to be a steady outlet, and we believe that it will always be for us if we continue policies that are calculated to hold
26752 the dealer's good will and cultivate dealer's business as we have in the past. The dealer busines, to us, is a back-log of business around which all our other business is built.

26756 Q. Mr. Bowen, has your company ever announced a definition of a dealer?

A. Yes, we have.

Q. There is a Commission's exhibit here in evidence, Mr. Bowen; it is No. 2262, and it appears to be an announcement issued by your Chicago office. It purports to set forth the revised sales policy of April 6, 1935.
26757 Without spending time and having you tell us about your definition of a dealer, I want to find whether or not that is a definition of a dealer which we just referred to?

A. Yes, it is.

Q. Now, does your company still follow this definition of a dealer?

A. Yes, this definition continues to be a part of our present policy.

Q. That Exhibit 2262, on April 8, 1935, is that announcement the only occasion when you publicly defined a dealer?

A. To the best of my recollection, it is; although ever since 1915 our conception of what constituted a dealer under our policy was along the same lines.

Q. There is an exhibit here, Commission's Exhibit 557, which is the N.R.A. Cement Code, approved by the President on November 27, 1933.

I would like to direct your attention to that exhibit, and particularly to Article XII, section 3, which also contains a definition of a dealer. I want to ask you with regard to that whether it had anything to do with your announcement of April 6, 1935 (handing document to witness)?

A. Yes, including a definition of a dealer in our statement of policy in April, 1935, we merely followed the wording previously used in the Code, and the wording is substantially the same.

26758 Q. I would like to call your attention to another Commission's exhibit, 933-7-P, and ask you whether you recall having received it (indicating).

It purports to be a letter addressed to you on the letterhead of the Southern States Portland Cement Company, signed by Mr. W. B. Elcock, dated 10-3-35.

A. (Examines document.) Yes, I recall receiving the letter.

26764 Q. Now, Mr. Bowen, we have been discussing the
26765 various steps taken by the Lehigh Company in connection with its sales policies and the conditions under which it sold its cement to customers. In one question I want to cover all those and ask you: Did anyone associated with your company disclose any of these steps to any competitors prior to the time that action was taken by your company?

A. No, we did not.

Q. Prior to the time that any of these steps were taken, did you on any occasion know what any of your competitors would or would not do with respect to your contemplated action?

A. No, we did not.

Q. And referring to all of these matters we have been discussing, was there any agreement or understanding with your competitors as to such action as you took, or any action which they took, or might take?

A. There was not.

Q. Then I would like to pass to another subject heading and take up your contract form, Mr. Bowen:

Can you explain to us the types of sales under which the Lehigh Company sells its cement?

A. Broadly, there are two chief classifications of our

sales. First, we have what we call our current business, which includes orders booked by customers at our prevailing market prices for shipment within 15 days from the
dates the orders are placed. Such orders are placed
26766 without reference to any particular use.

Then, second, we have what we call contract business which involves any business on which we offer a firm price for a period longer than 15 days. This type of business also has two sections; first, specific contracts, under which we protect the quantity of cement required for the construction of a particular piece of work; what we call a specific operation.

The contracts are closed for the period of time required for the completion of the project in question, and, then, also, we have certain contracts on which we protect the price for a calendar quarterly period; these contracts covering principally the requirements of purchasers such as concrete block, concrete pipe manufacturers, cities, railroads, and miscellaneous requirements.

Now, in addition to these types of orders which we book on our own forms, we also enclose, from time to time, orders for the United States Government in which the Government forms are presented for the contract. They are, in our view, specific contracts except that the form is not our standard form but is rather the form supplied by the Government.

Q. How does your company obtain current orders?

A. The only way I know to get them is by close and constant solicitation through our sales force and branch offices. In many parts of our territory where the people
who buy large volumes—we are frequently almost in
26767 daily contact with the trade. We do get a certain amount of business through our branch offices which comes to us without direct solicitation which consists, principally, of shipping instructions placed by the buyer against contracts previously booked.

Mr. Wooden: Your Honor, we are now going into the same subject that has been gone into with other witnesses from other companies.

I again offer to stipulate that the testimony of this witness would be to the same effect or similar effect as that of the testimony of other witnesses who have preceded him.

Trial Examiner Norwood: I think we have had that explained to us at least fifty times during this hearing.

By Mr. Leisure:

Q. Do you have a 15-day period, Mr. Bowen?

A. In respect to current orders, yes.

26768 Q. Without giving us a long answer, just tell us why you have it, Mr. Bowen?

A. It is a matter of custom with us to use 15 days for the period for which we are willing to protect our customers for any normal or ordinary quantity of cement they might want to buy. As a matter of fact, the practice of the 15-day period is only significant when there is an increase in price.

Q. How many years have you had it?

A. As many years back as I can recall.

26771 Q. Mr. Bowen, how does the customer know what the price of your cement is?

26772 A. Our customers are kept informed of our prices by regular quotations which are sent to them at regular intervals, whether or not there has been a change in our prices. They are also in constant contact with our salesmen who knew all about our prices at the destination in their territory.

Mr. Leisure: May I have marked, please, the document I hold in my hand?

26773 (The document referred to was marked for identification "Respondents' Exhibit 1117.")

By Trial Examiner Norwood:

Q. On this Respondents' Exhibit 1116, did the customer do the routing there?

A. (Witness examines document.) There is no routing shown. It is merely the railroad on which the car is to be delivered, the delivering line, and that was requested by the customer.

Q. Do you let the customer name the routing, in all cases?

A. No, our regular practice is that he does not name the routing; we do.

Q. This indicates here that the car is ordered shipped by the Lehigh Valley Railroad; is that right?

A. That is correct, but it means that the customer wants delivery on the Lehigh Valley Railroad on which his yard is located.

Q. I see. That does not cover the routing?

A. No, merely the delivery point.

Trial Examiner Norwood: Thank you.

By Mr. Leisure:

Q. Now, did you tell us to whom you send the quotations?

A. We send them regularly to all the dealers that we sell, and to all that we are trying to sell.

26774 Q. Is Respondents' Exhibit 1117 one of your quotations which you have just been describing?

A. Yes, it is a copy of one of our current quotation forms.

Q. Then when this order is received, Mr. Bowen, is shipment immediatey made?

A. Yes, shipments are made immediately, under ordinary circumstances, on the same day that we receive the order,—our formal practice is orders received up to about 4 o'clock any day are shipped on that day.

26775 Q. Is there anything more to that, than is indicated by Mr. Wooden's suggestion? Why do you do that so rapidly, Mr. Bowen?

A. Do it because we are constantly engaged in an effort to give better service than our competitors give, and to the extent that we succeed we strengthen our position with the dealers. By and large, I think that our service in that respect is more rapid, and better, than most of our competitors.

26776 Q. Mr. Bowen, why did your company adopt this five-day notice of price increase?

A. We adopted it in the early part of 1932, and did so to meet the competitive situation with which we had to deal. Several years before one of our competitors, the Lone Star Company, began using five-day notice for a period, over most of the territory in which we were in competition with them, having originally begun using it in Kansas. Our own quotations, advance prices, had been issued to take effect immediately, and while many of our competitors' quotations were also issued on that basis, we found a great many cases where some of our competitors booked business from buyers at the former price even after they had announced their increases.

This handicapped us quite a bit and we finally decided that the easiest course was the course to follow, and we adopted the five-day period, and have used it ever since.

Q. Have you any recollection, Mr. Bowen, at this time, how long this practice had been in effect by your com-

petitors before you did adopt it, or your company finally adopted it?

A. For pretty nearly two years before we finally adopted it.

Trial Examiner Norwood: When did you adopt it?

The Witness: In May of 1932, as I recall it, sir.

26777 (RESP. EX. 1117 was offered and received in evidence.)

26778 By Mr. Leisure:

Q. Mr. Bowen, in the event of a price reduction, does the reduced price apply to any shipments which have been made?

A. Yes, any reduced prices we publish are made retroactive to all shipments during the five days prior to the date of our announcement.

Trial Examiner Norwood: The date of your announcement, or to the effective date?

The Witness: In the case of reductions, the two—

Trial Examiner Norwood: Are the same?

The Witness: Are the same, yes.

Trial Examiner Norwood: I see.

By Mr. Leisure:

Q. How long have you had this practice?

A. Since the adoption of the N.R.A. Code. The provision was included in the Code and we adopted it.

Q. What had been your practice, then, prior to the Code, Mr. Bowen?

A. Before the Code we had no standard practice but merely followed a policy of expediency, trying, in most cases, to limit our application of a reduced price to shipments in transit, but finding that, in reality, we were frequently, under competition, called upon to apply them to shipments already in the dealers' stocks.

26779 Q. What kind of orders do you book, Mr. Bowen?

A. When we close a contract for future delivery with a dealer, it is closed on a form which we call a specific sales order, which provides that the dealer will purchase the cement at our prevailing market price until such time as our price might advance, and that in that case the specific sales order will be converted into a specific contract at the prior price.

Q. Will you tell us whether or not you have separate quotations with respect to specific work?

A. Yes, we do.

Q. As to the kind of order that you book, how do you handle the contract?

A. When we close a future contract with a contractor it is closed on our standard form of specific sales contract.

26784 The witness identified Resp. Ex. 1118 as one of
26785 the specific work quotations which he has just been
26786 describing which was made by Lehigh to a dealer. (RESP. EX. 1118-A and 1118-B was offered and received in evidence.)

By Mr. Leisure:

Q. Referring again to Respondents' Exhibit 1118-A and B, in what respects, if any, does this quotation differ from the quotation sent to dealers for current requirements, Mr. Bowen?

A. Quotations to dealers for current requirements is for immediate acceptance and limited to shipments over a 15-day period. The specific work quotation provides for acceptance within 15 days of its date; covers the quantity of cement required for the work specified in the quotation, and provides for shipment during the time required for the completion of the project.

26787 The witness identified Resp. Ex. 1119 A and B as
26788 a copy of a specific sales order closed by Lehigh with a dealer, representing the sale of cement for the project covered by the specific work quotation previously mentioned. Lehigh has been using that specific sales order since the adoption of the N. R. A. Code. The use of a form of this character was prescribed by the Code and Lehigh adopted it them. The principal purpose of this specific sales order is to assure Lehigh that if it advances its prices, its contracts with the dealers will be for the amounts actually required to complete the work then on their books. Before Lehigh used this form its contract with dealers was on specific work contract forms on the theory that the dealers should have ordered cement on these contracts as the work progressed but, as a fact, the dealer frequently merely bought cement on the market hoping that if there should be an increase in Lehigh's price he might then draw the full amount of cement required. This necessitated checking by Lehigh of each and every contract in its books at the time of a price increase and embroiled it in a great many disputes with its dealers. The specific sales

order provides the dealers will give Lehigh, at the time of price increase, really accurate information as to the amount of cement required to complete the project. The use of this form has protected Lehigh and greatly smoothed its dealer relations.

26791 Trial Examiner Norwood: I think that there would be no objection to your putting in sufficient evidence to show the Commission that their useful purpose is served by each and every one of these methods; but there is no sense in your putting this in with regard to every particular Respondent here, that that same useful purpose obtained in his business, and what it is.

Mr. Leisure: Well, I want to say that when I have one representative from a company that has some 10 or 15 mills all over the face of this country, and I cut down the offer of exhibits to one exhibit out of thousands of exhibits showing what all of those companies do—

Trial Examiner Norwood: Yes.

Mr. Leisure: —I do not think I am having not only a fair hearing, I do not think I am having any hearing if I am not allowed to do at least that.

Mr. Wooden: Your Honor, that point has come up again. Mr. Jacques brought it up yesterday. We all know very well what the case of Morgan vs. The United States is, and the principles that it involves. Mr. Jacques referred to it yesterday, but I do resent having it put on the record here by Respondents' Counsel, and held as a threat over us to let them put in absolutely everything that they want to pile into this record regardless of its relevancy or materiality.

26792 Mr. Leisure: I think when we put in one paper to show something after all of the thousands of papers that Mr. Wooden put in, when we put in one papet as showing an example of what we are trying to get at, if that consists of bluffing, then we are bluffing; but if it does not, then we are trying to shorten this case and present it as quickly as possible, and we are trying to give to the Examiner, and on this record, only the bare necessities of what is necessary to make out a defense.

Mr. Wooden: This policy I refer to has been in progress here ever since we closed our case—and before we closed our case on April 28th—to try to delay this case interminably.

Mr. Leisure: Well, Mr. Wooden always says that, but if

we deal with facts, instead of motives, I think we will get along faster,—both of us —

Trial Examiner Norwood: I think we might get along faster—

Mr. Leisure: —get along much faster.

Trial Examiner Norwood: —when we deal with that, but I mean, I think that Counsel are within their rights in appealing for a hearing such as they desire, and such
26793 as is their concept of a fair hearing. They have a right to urge that on me. Giving a fair hearing is my responsibility.

Mr. Wooden: Ours, too, —and I want to give it.

(RESP. EX. 1119-A and 1119-B was offered and received in evidence.)

The witness identified Resp. Ex. 1120 as the form
26794 of specific work contract being used by Lehigh at the present time. Lehigh has been using it in its present form for about two years.

(RESP. EX. 1120 was offered and received in evidence.)

The witness identified Resp. Ex. 1121 as a blank form of specific work contract used by Lehigh prior to 1916.
26795 He is able to identify it because the list of plants to which sacks may be returned is provided in the contract and included only such plants as Lehigh had prior to 1916. He identified Resp. Ex. 1122 as an actual specific sales contract closed with a customer during 1922. This form was currently in use at that time.

Examination on Voir Dire by Mr. Wooden.

Q. Can you say whether or not, Mr. Bowen, those forms were the same as forms for similar purposes recommended by the Trade Relations Committee of the Cement Manufacturers' Protective Association—

Mr. Leisure (Interposing): Now I object to that.

Q. (Resumed) —or the Portland Cement Association?

Mr. Leisure: That is clearly not voir dire. That
26796 is cross-examination, and I object to that question.

Trial Examiner Norwood: Read the question.

(Question read by Reporter.)

Trial Examiner Norwood: I don't know whether that may go to the point as to whether or not it is in evidence.

Mr. MacIntyre: That goes to the argument.

Trial Examiner Norwood: Answer the question. The objection is overruled.

A. I can't say. I have no recollection of the provisions recommended by the committee to which you refer. I don't think I can answer the question without having those recommendations and being able to compare them with the contract.

26797 (RESP. EXS. 1121 and 1122 were offered and received in evidence.)

The witness identified Resp. Ex. 1123 as an actual specific work contract closed by Lehigh with a dealer during 1923.

26798 (RESP. EX. 1123 was offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Bowen, I note in this Respondents' Exhibit 1123, under the contract, the purchaser represented that he would use the cement covered by the contract for a building to be erected in Indianapolis, and there is a clause under the cancellation paragraph which states—and I am now quoting: "It is understood and agreed by the parties hereto that if any of the representations made by said purchaser to the cement company," and so forth.

What was your purpose in including that clause in this contract (handing document to witness)?

A. (Witness examines Respondents' Exhibit
26799 1123) That clause was intended to protect us against misuse of the contract to make sure that the cement was used for the work which the contract covered, and to enable us to check and make sure that it was so used.

Q. Well, you say "misuse,"—what methods of misuse do you have reference to against which you sought protection?

A. I should say, first, that our practice of extending contract protection for future delivery involves a good many risks, because we extend that protection at any one time to many hundreds of buyers and on a good many million barrels of cement. Unless we can be sure that our specific contracts really are specific, that is, that the work really exists, that the quantities covered by our contracts are correct, and that the cement actually will be used on that work, we would be quite unable to figure any sort of future program of operation or shipments.

It is absolutely indispensable for us to have the best and

most accurate knowledge that our contract obligations represent commitments that will be called for, because that is so we have during our entire experience included in our contract forms clauses designed to give us the protection that we consider only reasonable and to protect ourselves against misuse.

Now, this misuse most often takes one of two forms,—

26800 either the buyer takes cement at his customary place of delivery but uses the cement for some other purpose than the one specified in the contract, or else he may divert the cement from the point provided in the contract and to which the cement is shipped to some other point. In that case we are subjected to a double deception; not only is the cement not used for the purpose covered by the contract, but such a shipment has always resulted in embroiling us in a controversy with our dealer at the point to which the cement is moved.

Q. May I see that last contract again, please?

(Witness hands Respondents' Exhibit 1123 to Counsel.)

Q. There is a clause in this contract with reference to the price being subject to any advance in freight rates, Mr. Bowen.

For how long had it been the practice of your company to include that clause in its contracts?

A. May I see the contract again?

Q. (Counsel hands document to witness.)

A. I can't answer exactly, but the clause had been included in our contract for some years prior to the date of this contract.

Q. May I look at it?

A. (Witness hands Respondents' Exhibit 1123 to Counsel.)

Q. There is a column in this contract, Mr. Bowen, which states: "This price which is special has been given to the purchaser by the cement company because of the purchaser's representation as to the use of the cement."

26801 Mr. Bowen, in what respects was the price mentioned in the specific job contract a special price?

A. It was special in that our ordinary method of selling limited the price protection to a 15-day period. When we extended price protection to customers for longer periods we considered that we were giving them special consideration in return for which we felt ourselves justified in providing certain protective clauses in our contract.

Q. I notice another clause, here. I am still referring to Respondents' Exhibit 1123, which reads: "The cement company shall have the right to change the route by which all shipments hereunder shall be forwarded."

Why did you incorporate this provision in this contract form, Mr. Bowen?

A. Because we were selling f.o.b. destination and wanted to have the right to avail ourselves of the lowest available rate and the shortest possible route, to make the delivery. We also kept in mind the fact that by keeping the routings in our hands we could frequently get desirable business from certain railroads.

Q. How long would you say it has been the practice of the Lehigh Company to include such a clause in its contract?

A. Oh, for a great many years.

Q. Now, I notice that this contract also contains its clause relating to specifications whereby the Lehigh
26802 Company guarantees to make the requirements of the standard specifications adopted by the American Society for Testing Materials. How long has that clause been incorporated in the contracts of the Lehigh Company?

A. For a great many years, too. I don't remember ever having seen a contract that didn't have that in.

Q. That goes back over your whole experience?

A. To 1911.

Q. And the routing clause, can you give us any idea about that? Would you say not less than 10 years?

A. I don't understand.

Q. The routing clause, the one I asked you about before; you said "a great many years," and I don't know just what that means; more than 10 years, would you say?

A. I think at least 10 years prior to the 1923 contract.

Q. In this same contract under the price clause there is typed in: "Any shipment made during the life," and so forth. Can you tell me, Mr. Bowen, whether or not such a clause was typed in with respect to all of the specific work contracts entered into by Lehigh at the time this form was in use (handing document to witness)?

A. Yes, it was.

Q. How long has that kind of clause been included in Lehigh contracts?

A. For only a comparatively short time; perhaps
26803 a year or two before this date. Later this clause was included in the printed contract form.

Q. And that is prior to 1923 that you are now referring to?

A. Yes.

Q. Now, why did the Lehigh Company adopt this clause, Mr. Bowen?

A. It sometimes happened that our prices advanced during the time before our contracts were completed. In fact, whenever we had an advance in our prices we had a number of uncompleted contracts on our books. We found that at such times it was impossible to get the customers to continue to take shipments on—pardon me just a moment.

(The witness refers to document.)

May I correct that by saying that we found, frequently, that our prices were reduced and that we had on our books at such times large contract balances closed at higher prices. As our contracts were originally written the theory was that the buyer would continue to buy at the higher price but in practice we found it impossible to get him to continue to do so. He merely bought from some competitor at the new, reduced price.

Conceivably we could have enforced our contract but that would have meant a lot of lawsuits, so we finally decided to follow the easier course of including in our contracts a provision that gave the buyer a benefit of a reduction.

26804 Q. There is a provision in this contract, Mr. Bowen: "Sacks must be paid for at the same time as cement."

Can you tell us how long that that has been a provision in Lehigh contracts?

A. It had been in effect for a number of years prior to 1923; at least ten.

Q. Now, the contract also provides for the customer's paying the freight for the return of sacks. Can you tell us for how long this provision had been a part of Lehigh contracts?

A. For at least the same length of time as I previously mentioned.

26805 The witness identified Resp. Ex. 1124 as a Lehigh specific work contract closed with a customer early in 1927.

26806 (RESP. EX. 1124 was offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Bowen, on this contract, Respondents' Exhibit 1124, there seems to be a difference in the provision of this contract covering the return of cloth sacks, and the other contracts. What was the purpose of your making a change in this contract?

A. May I see it, please?

Q. Certainly (handing document to witness).

A. This contract provides that the sacks are not sold with the cement but remain the property of the cement company, and that we agreed to refund to the purchaser on return of the sacks the deposit charge made at the time the cement was shipped.

This clause was adopted because we had had several occasions on which we experienced difficulty in getting cloth sacks returned, and also because, as I recall it, it simplified some of our tax problems. A clause similar to this was used by some of our competitors several years before we did.

Q. What I was getting at, Mr. Bowen: Does that indicate a difference in the Lehigh method of handling the return of sacks?

A. It does; indicates that change from the previ-26807 ous contracts.

Q. And I wanted to find out why you made the change, Mr. Bowen.

A. We made the change in order to eliminate the difficulties to which I have referred in getting our cloth sacks returned to us, was the principal reason.

Q. Was that practice adopted in all of your territories?

A. Yes.

Q. There is a provision in the contract stating: "Shipment in paper bags are made at purchaser's risk of breakage and resulting loss of cement."

When was this provision first included in Lehigh contracts?

Mr. Paulson: I object; immaterial.

Trial Examiner Norwood: Objection overruled.

A. It had been included in our contracts some years prior to the date of the one you hold, but we, again, inserted it in our contracts at about that time.

By Mr. Leisure:

Q. And again, Mr. Bowen, does this provision, or does it not, indicate a change in the Lehigh practice?

A. Yes, it indicates that change, the restoration of that clause.

26808 The witness identified Resp. Exs. 1125-A and B and 1126 as specific work contracts closed with dealers in 1930 and January, 1931, respectively. The figures on Resp. Ex. 1125-B, the back of Resp. Ex. 1125-A, show that the destination price of $2.48 per barrel in paper reflects a mill base figure of $1.70 at Universal and that this price would give Lehigh a net return of $1.55 per barrel at its Fordwick plant.

26809 (RESP. EXS. 1125-A, 1125-B, and 1126 were offered and received in evidence.)

26810 Q. As to this Respondents' Exhibit 1126, this contract indicates a difference with respect to the provisions covering freight rate charges, in that it eliminates the provisions that the contract price will be modified either upward or downward by reason of freight advance or increases.

What was the reason for that change? What caused Lehigh Company to eliminate that provision from its contract, Mr. Bowen (handing document to witness)?

(Witness examines Respondents' Exhibit 1125 and 1126.)

Q. I am referring to Respondents' Exhibit 1126.

A. We had discovered from experience that as a matter of competition it was impossible to succeed in having the customer pay the increased price occasioned by a freight rate increase even though the contract provided that he should pay it.

26811 We thereupon eliminated that clause, and because the contract provided that the buyer should receive the benefit of any reduction in our prices, he continued to receive the advantage of another freight reduction because that operated to reduce the price.

Q. Now, in the same contract, what is the reason for the provision in this contract relating to dealer discount?

A. (Examines Respondents' Exhibits 1125 and 1126) Are you referring to 1126, still?

Q. Yes, Mr. Bowen, I am referring to Respondents' Exhibit 1126. Let me ask you, is there any reason—

A. 1126 does not provide for any trade or dealer discount. It is a form used by our company in the application of our dealer service payment plan, inaugurated in No-

vember, 1930, which provides that the dealer is to receive the 5-cent per barrel payment on this contract in consideration of representations made by him, and it also provides that if the representations are incorrect this clause of the contract should be void.

Q. What are the figures on the back of Respondents' Exhibit 1126, Mr. Bowen?

A. (Examines document.) They show that the destination contract price of $2.36 per barrel figured to a
26812 base figure at Ironton of $1.66, and that the contract price would give us a net return at our Fordwick mill, after deduction of sacks, and the 5-cent per barrel dealer service payment, of $1.49 per barrel.

The witness identified Resp. Ex. 1127-A and B as a specific work contract closed by Lehigh with a contractor during the latter part of 1933.

26813 (RESP. EX. 1127-A and 1127-B was offered and received in evidence.)

Q. As to Respondents' Exhibit 1127-A and B; with respect to dealer's discount, does it or does it not represent any change on the part of your company, Mr. Bowen, with respect to that?

26814 A. It does represent a change in that respect.

Q. Does it represent any change with respect to the manner in which freight rate charges should be handled?

A. Yes, it includes a clause to the effect that prices subject to any increase in the freight rates, or by the extent of any Government tax on freight rates—

Q. Under what circumstances did you restore the clause with respect to the increase or decrease in freight rates, Mr. Bowen?

A. As I have previously described, we had discovered that we were unable to successfully enforce a con-
26815 tract provision that the customer should pay the amount of any freight increase. However, in 1933, we were in a period of great uncertainty. There were many threats of higher freight rates, and even of general sales taxes. We decided that these hazards were sufficiently great to warrant us in placing a clause in our contracts to try to protect ourselves against them.

The witness identified Resp. Ex. 1128-A and B as a specific sales contract closed between Lehigh and a contractor in 1934.

Examination on Voir Dire by Mr. Wooden.

Q. Is this form the same as the one included in the N.R.A. Code?

A. Let me see it.

(Counsel hands to witness document marked for
26816 identification 1128-A and B.)

A. It is substantially in that form. There may be a few slight differences, but the intent of this contract form was to incorporate in it everything that was required to insure our compliance with the Code.

(RESP. EX. 1128-A and 1128-B was offered and received in evidence.)

By Mr. Leisure:

Q. That contract, Mr. Bowen, appears to differ from the last one you just discussed.

What is the difference, and what was the reason for the change?

26827 A. The differences in this contract from the former ones involved principally changes to bring the contract into conformity with the Code provisions. The contract contains a clause which specifically bars diversion of the cement from one point to another. It seems the principal change I see without comparing it with previous ones.

26818 Washington, D. C.,
November 10, 1939.

26819 JOHN C. BOWEN thereupon resumed the stand and testified further as follows:

Direct Examination by Mr. Leisure (Continued).

Q. Mr. Bowen, yesterday, when we adjourned, we had been discussing some of your contracts, and I had called your attention to certain provisions in them.

The witness identified Resp. Ex. 1129 as a blank
26820 form of specific work contract which Lehigh began to use in the latter part of 1937.

26824 (RESP. EX. 1129 was offered and received in evidence.)

Q. Referring to these provisions I have been questioning you about in these various contracts, Mr. Bowen,

and the conditions appearing in these forms and orders: Did you have any understanding or agreement with any of your competitors as to the use of those provisions?

A. We did not.

Q. Has your company, or has it not, been free at all times to use whatever contract forms and terms of sales which your experience taught you was the best for your own company?

26822 A. We have except during the time that the N. R. A. Code required us to have our forms in such shape as to include the provisions of the Code.

Q. I would like to pass, now, and direct your attention to another subject matter, Mr. Bowen.

You, I think, told us that Lehigh quoted prices around some of its mills which do not have a direct relation to the base figure at the mill and to freight. How do you arrive at those prices?

A. Practically all our Lehigh mills are in locations where there is no cement market,—or work, when we began shipping Lehigh cement from the Buffalo plant in 1927,—and when in the early part of 1928 we decided to figure prices from that mill that were based on that mill,—we found a new problem in trying to determine what prices we should quote to our customers in the City of Buffalo.

Most of our deliveries in Buffalo are made on switching rates, and those rates vary according to the number of railroads that participate in the movement. If we figure our prices on the individual rates we would have a number of different prices to different customers in the City of Buffalo, and we know from long experience that that would not work.

There were also a number of customers located immediately outside the switching limits, and in direct

26823 competition with the dealers just inside the limits, and we knew that our prices would have to be such as to recognize that fact.

After studying the problem carefully, what we decided to do was to quote the dealers located inside the switching limits the same prices as we quoted to the first dealers immediately outside the switching limits, particularly because that action gave all of the dealers in the City of Buffalo 20 cents lower prices than they had received from us before.

In 1929, when we began shipping from the Cleveland grinding plant, and used that plant as a basing point, we found exactly the same sort of situation existing in the Cleveland market, and handled it in exactly the same way.

Q. Well, with respect to the areas in the vicinity of the competing base mills, how do you quote prices in those areas?

A. Where we find in such areas that competitors are quoting prices, and as we learn of those prices, we meet them, or retire from the field.

Q. Well, you refer to prices around metropolitan areas as having no relation to base figures. What metropolitan areas did you mean when you said that?

A. There are a number of such markets, including New York, Boston, Baltimore, Washington.

Q. Well, when you say "New York," what do you include in that?

A. I include in the New York area the four
26824 boroughs of Manhattan, Brooklyn, Bronx, and Queens.

Q. How do you quote in New York?

A. We quote all dealers in the New York Metropolitan market the same price, irrespective of the fact that our freight rates to the destinations of some of the dealers are higher than to the destinations of others.

Q. How did you come to do that, Mr. Bowen?

A. It has been the result of competition over a long period of time.

Q. Well, you say it is the result of competition. Can you give us what company initiated the policy of charging the same price in this territory?

A. Oh, the situation has continued for so many years that I don't know who began it. It is a logical outcome of the somewhat unique geographical and freight rate situation that exists in that New York Metropolitan area.

Q. Have there been any changes in that practice?

A. Yes, I recall that about 12 years ago one of our competitors understook a change in that situation, the movement taking the form of quotations by that manufacturer which named prices to the customers located at the inland delivery points in the New York market, those taking higher freight rates, prices that were 6 cents per pound higher than he quoted to the dealers located at the waterfront destinations which take the lower freight rate.

26825 These quotations were followed by most manufacturers in the market, particularly because both prices represented a reduction from the price previously quoted, but the manufacturers who met the quotations did so very slowly, and some of them didn't issue quotations at all. The result was that tremendous pressure was exerted by the dealers on the manufacturer who had established those prices, and the pressure was apparently sufficiently great enough to cause him to recede from his position, which he did within a very few weeks by quoting the lower of the two prices to all the destinations in the market.

That is the only case of the kind I recall in recent years that confirmed the opinion that we have had for many years that in any market of that kind where there are a great number of dealers in direct competition with each other the eventual outcome is bound to be one price to all those dealers, and, so far as I know, it is always a price that reflects the lowest of the freight rates.

Q. You say "about 12 years ago." That would be about 1927. You say one of your competitors endeavored to change the situation in New York by quoting different prices in that territory. What company was that?

A. It was in 1927, and the company was the Atlas Portland Cement Company.

Q. Are the prices the same today in the New York market?

A. Yes, our price today in the New York market
26826 is the same to all buyers.

Q. Now, as to these four boroughs in which you say you sell in New York. How do you make deliveries from your mills to the destination in the New York market?

A. From our Lehigh Valley mills to the points on the waterfront there are several distinct methods of delivery. The first is by rail and cars, the cars being moved to Jersey City, and then placed on car floats on which they are moved to the New York market and delivered on the terminal tracks of the railroads on the New York side.

These deliveries are almost of the same character as carload deliveries anywhere. The rate is, for such deliveries from the Lehigh Valley, is 11 cents per 100 pounds, at the present time.

Then these same railroads will deliver by barge either to their own piers or to other customers' piers. In those cases the cement is moved by car to Jersey City. The railroad unloads the cars to barges there, and moves the barges to either their own piers or customers' piers. The rate for such deliveries is 11 cents per 100 pounds plus, in some cases, extra towing.

The third method is delivery by private lighters. Cement is shipped to Jersey City by car, and handled from Jersey City to customers' dock by lighters engaged by the shipper. On such business the railroad com-
26827 pany makes a charge of 11 cents per 100 pounds, in lieu of the lighterage service. The private lighterage is paid by the shipper.

Q. Take the Hudson mills. How are deliveries made in the New York market from the Hudson mills?

A. The same three general methods of delivery apply. In the case of car shipments, they are moved directly by rail to rail points on the line of the originating carrier, for which the charge is also 11 cents per hundredweight.

Secondly, the cars are brought to some lighterage station and moved by the railroad company in its barges to either its own docks or customers' docks at a charge of 11 cents per hundredweight plus, in some instances, extra towing, and the third method of delivery by private lighter is directly from the Hudson River mills to the point of destination in lighters engaged by the shipper.

Q. Well, now, when I asked you how you delivered in New York, Mr. Bowen, you told us the methods of making delivery at rail terminals and at points that can be reached by barge; but you did not tell us about how your deliveries are made to inland points.

Would you mind telling us that, also?

A. The inland points are principally on the lines of the New Haven and Long Island Railroads. Cars are
26828 brought to Jersey City by the originating carriers, are there floated to the connecting points on the New Haven and Long Island railroads, who move them to the inland stations.

Q. Well, is there any relation between the price quoted in the New York market and the territorities immediately adjacent to it?

A. Yes, there is.

Q. What is it?

A. We quote all dealers in the New York market exactly the same price as I have already described, and that includes inland points close to the New York City line that take much higher freight rates than the water-front points.

Now, directly outside of New York City proper there are a good many dealers who are in direct competition with the dealers directly inside the borders of New York City, and we know that our prices must be such as will take into consideration the relative positions of these dealers, and we do take it into consideration.

In the territorities immediately to the north and east of New York City, that is Westchester County, and Long Island, our prices are made with regard to a relationship with our New York City prices.

In Long Island, where most of these prices exist, the relationship generally follows the successive advances in the Long Island Railroad rates, which are published roughly on a zone basis, advancing by steps that are equivalent to five or ten cents per barrel.

26829 Q. Well, do you recall, Mr. Bowen, or can you tell us what company first quoted prices in this manner?

A. I cannot; it has existed for a great many years, and was in existence, as a matter of fact, when we began selling in the New York market through our own sales organization in 1912.

Q. Well, when there is an increase of price, does an increase or reduction in price in these zones affect the prices proportionately, would you say?

A. Yes, when we change our prices in New York City upward or downward, because the relationship is as I have explained it, it is necessary for us to increase or decrease our prices in the surrounding areas correspondingly, and that has been our practice.

Q. Well, is it necessary for you to change the price in these various zones immediately outside of New York City when you change your price in New York City?

A. Yes, we think it is, and we change them in every case.

Q. Well, when price changes are effected, is it necessary to change prices to all adjacent points?

A. Not in every case. The question always is as to the competitive relations between dealers. I cannot conceive of any prices that we might quote that would not

take into consideration the question of whether the result of these prices would be to totally exclude one dealer
26830 from competition. If we attempted such prices it is, to me, a foregone conclusion that some competitor would make a reduction to keep the affected dealer in the competition, and if that did not happen the dealer would be merely driven out of the picture and we would lose an outlet.

Q. Now, you said a while ago that the successive increases in your price, in your prices, in Long Island, in certain instances, were in relation to the increases in the freight rates there. Is that so in every case?

A. No, not entirely so. During the last six or eight years there have been a number of cases in which one manufacturer, or another, has reduced the price at a certain destination, apparently in an effort to bring such dealer into a more favorable competitive position. As the result of that situation there are a number of points at which our prevailing prices are lower than they would be by the full application of the method that I have described.

26831 The witness identified Resp. Ex. 1130-B as a memorandum prepared at his request by one of the members of Lehigh's Allentown office organization listing the points in Long Island which he has described, where Lehigh's prices are somewhat lower than they would be if it had advanced them in direct relation to the freight rate increases of the Long Island Railroad; Resp. Ex. 1130-A as a letter signed by C. S. Crawford and delivered to the witness under those circumstances.

Examination on Voir Dire by Mr. Wooden.

Q. The attached statement of rates from the Lehigh district, which is marked 1130-B, for identification; who made that up?

A. Prepared by our traffic department.

Q. Who are the initials "J. H. M." in the lower left-hand corner?

A. They indicate Mr. J. H. Maytrott, one of the clerks in our traffic department.

26832 Q. What was the purpose or occasion for making up the compilation?

A. Do you refer to the first or second sheet?

Q. To both.

A. It was prepared at my request in connection with our study concerning this case.

Q. May I ask: Does the compilation of rates involve a combination of rail and water rates?

A. No, it is merely material taken from the Long Island Railroad tariffs.

Q. But it says, "Rates from the Lehigh District."

A. There are through rail rates published by the Long Island Railroad in connection with railroads such as the Lehigh and Jersey Central, on which the traffic originates.

Q. Aren't these rates from the Lehigh district to Long Island?

A. Yes.

Q. And doesn't that necessarily involve rail and water rates?

A. It involves, as I have already described, the floating of the cars from Jersey City to the Long Island terminal points, which are included in the rates.

Q. Are the rates on 1130-B the ones that are included in your delivered prices to those destinations?

A. They are the rates on which we made any shipments to the destination concerned during the period
26833 when these respective rates applied.

Q. I know you made shipments on them, but did you calculate your prices on them?

A. I have already described that the prices at these locations, ever since we have been selling our own cement, were not arrived at in that fashion, but were arrived at with a relationship to our New York City prices.

Mr. Wooden: Your Honor, it seems to me that in view of the witness' testimony that the prices are not based upon those calculations there, or those rates there, that it becomes irrelevant and immaterial, and I object on that ground.

Mr. MacIntyre: And, if Your Honor please, the witness has testified that he has prepared this in connection with this case to show what would happen if he did so base his prices, and he has testified he doesn't so base them, but he has prepared the memorandum to show what would occur if he did so use them, and he prepared them for use in this case to show what would happen if he did that.

26834 (RESP. EX. 1130-A and 1130-B was offered and received in evidence.)

Direct Examination by Mr. Leisure (Resumed).

Q. Well, Mr. Bowen, with respect to this exhibit, P130-A and B, when you meet the prices quoted at the points which are mentioned, is it necessary for you to quote lower prices for adjoining points, or what is the fact as to that?

A. Not in every case, although I recall distinctly
26835 that one or two of those points are points at which we made a reduction in our price after some competitor had previously reduced his price at some adjacent point.

Q. Mr. Wooden asked you about these rates. I don't think your answer was entirely clear. It wasn't to me, at any rate.

What is the rate structure of this Long Island Railroad as you use it?

A. The Long Island Railroad deliveries begin at inland stations in Greater New York. The rates for these deliveries are somewhat higher than the rates applying to waterfront deliveries. Then as the Long Island Railroad goes east the rates advance by successive steps, and those advances are somewhat larger in proportion than the scale of rates generally applying in the eastern territory.

Q. Well, now, passing to another matter. I would like to address your attention now, Mr. Bowen, to the subject of trucking. I think the record shows that your company has mills in the Lehigh Valley at Sandts Eddy, at Ormrod, and Chapman.

Have you ever delivered cement from those mills to the trucks, Mr. Bowen?

A. Yes, we have.

Q. And were these deliveries to trucks of customers?

A. They were in part deliveries to customers' trucks,
and in part deliveries by trucks hired by our
26836 company.

Q. How did this originate, Mr. Bowen,—when did you first deliver to trucks, and what were the circumstances?

A. We first began deliveries about 1920, at a time of very severe car shortage. This car shortage led to a great shortage of cement all through the eastern territory, although it did not reflect any lack of cement on hand at the mills, but merely lack of facilities for delivering it.

Our shipments at that time were from seven to eight weeks behind, and there were a considerable number of customers who, under those circumstances, endeavored to supply their needs by truck deliveries. We, of course, were anxious to hold and serve our customers, so we were glad to cooperate with them to that extent.

Now, in very large part those deliveries at that time cost the customer more at destination than car shipments would have cost him and he had been able to secure them, because there were then comparatively few good loads, and delivery costs were extremely high, but in the minds of the customer at the time it was not a question of price but a question of getting the material.

Q. Well, prior to 1920, I think was the date you used,—did the Lehigh deliver to trucks?

A. No, we had no demand for such deliveries.

Q. Or, prior to 1920, did you make deliveries to trucks hired by Lehigh?

26837 A. No.

Q. Well, on sales to buyer's trucks, how did you figure your price?

A. At that time we looked on trucking as a temporary proposition, and made no particular price adjustment. If we got as good a return on the cement when we delivered it to trucks as we would have received on the same shipment made by rail, we were satisfied. Most of the deliveries, therefore, were invoiced at the delivered price previously arranged with the customer, and we allowed him the amount of the rail freight rate.

Q. I don't remember whether I asked you, Mr. Bowen, how long this car shortage lasted,—did you tell us?

A. It lasted through practically all of 1920, and was relieved in the fall of 1920, but by then the winter period was on us, and there was comparatively little demand, and then in 1921 and '22 there were a considerable number of transportation difficulties, and there were some truck deliveries during that period under much the same circumstances.

Q. Well, did there ever come a time when rail service was resumed to the normal as before the car shortage?

A. Yes, by 1923 railroad difficulties had been largely cleared up, and railroad transportation was on a fairly normal basis.

26838 Q. Was there a demand for shipments by truck, say, in 1924?

A. There was comparatively little during 1923 and 1924.

Q. During the period from 1920 to 1923, Mr. Bowen, on what terms did you sell to customers who asked for delivery by truck?

Mr. MacIntyre: The witness has told us that, if Your Honor please.

Trial Examiner Norwood: Let him answer.

By Mr. Leisure:

Q. Well, tell us again, Mr. Bowen—I don't think you have.

A. Generally speaking, it was during all that period on the same basis as I have already mentioned for 1920. We were content to get the equivalent of our mill base figure, and either invoiced shipments at the destination prices figured on our Lehigh Valley mills, with an allowance equivalent to the rail freight rate, or else invoice them in some cases at an f.o.b. mill price which was the equivalent of our mill base figure.

Q. Did there ever come a subsequent time when Lehigh Valley delivered to trucks in any substantial quantity, Mr. Bowen?

A. Yes, beginning in 1925 there was a fairly steady increase in the volume of truck deliveries.

Q. Was there a demand for trucking by customers at that time?

A. Yes, there was an increasing demand for such deliveries.

Q. What was your experience with that situation as to this increased demand?

26839 A. Well, we found that there was a growing number of requests for truck delivery. It was time when there had been a great expansion of good highways, and growing of motor transportation, and a great many buyers who felt that this mode of transportation offered them convenience and economy.

26841 Q. On what terms did you sell for delivery to trucks in 1925, Mr. Bowen?

A. The early part of that period we sold generally at the terms and in the method that I have previously described, but we found very quickly that there were a great many markets in which, under those circumstances, our prices were not competitive. In those cases we made what

ever adjustments in our prices were necessary to make our prices what we thought would be competitive.

Trial Examiner Norwood: What did you mean by "competitive," there?

The Witness: At least as low as those of our competitors.

Trial Examiner Norwood: And then you charged less, when it was delivered by truck, to enable the dealers receiving by truck to meet the competition? Is that
26842 what you mean?

The Witness: We reduced our prices; reduced the cost of our cement to those dealers.

By Mr. Leisure:

Q. Just before going on with respect to that, Mr. Bowen: Can you give me any example of what you have just said, of circumstances where you gave any special allowance?

A. Yes; I recall,—well, what was perhaps the first case of its kind.

The City of Bethlehem, Pa., is a substantial cement market, and a market in which our company had always done a great deal of business. Bethlehem is located about five miles from a group of cement mills at Bath, Pa., and about 12 to 14 miles from a group of cement plants at Northampton, of which our Ormrod mill is one.

We quoted the Bethlehem dealers our Lehigh base figures as an f.o.b. mill price and found that our competitors at the Bath mills were quoting the same price f.o.b. their mills. Very shortly we found that we were not getting any Bethlehem business because it was costing the Bethlehem dealers less money to truck cement from Bath, and they, of course, were buying on the basis of their cost at destination.

As nearly as we could figure it, the difference in trucking cost was about 5 cents per barrel in favor of the
26843 Bath mills, so we proceeded to offer the dealers in Bethlehem an adjustment of 5 cents per barrel from our previous prices in order to have our f.o.b. mill price such that we hoped that if would bring our cement to Bethlehem at a cost as low as the cement that was reaching that market from the Bath mills.

Q. Do you know whether or not you were the first company in the Northampton group to make such an allowance?

A. I don't know, but I believed at the time that we were not, because some of our competitors in the Northampton district seemed to be getting considerable business in the Bethlehem market when we were not.

Q. Was there any other reason—what I am getting at is, was there any other situation which caused you to make this allowance, Mr. Bowen? I am speaking of special allowances on sales to certain destinations.

A. There were a number of different situations that arose, and we adopted different methods to deal with them.

One characteristic method involved the territory around Reading, Pa. The Evansville plant of the Allentown Cement Company is about 10 to 12 miles from Reading, while our plant at Chapman, from which we had always done a good deal of business in the Reading market, is about 22 to 25 miles from Reading. We found that the Allentown company was quoting prices, f.o.b. mill prices, to customers in Reading and vicinity that were higher than the Lehigh Valley base figures, but which resulted 26844 in lower cost of Allentown cement delivered by truck throughout that territory than we were quoting.

Because we didn't want to pass up that business, and because the same situation applied to a number of towns in the vicinity of Reading at which we had done a substantial business, we wanted to try to meet the competition in a way that would accord the same sort of treatment to all the dealers affected. In that case we engaged a large trucking company and had them make a study of the costs of truck delivery from the Allentown plant throughout all that territory, and from our own plant throughout that territory. When that had been done we then quoted prices for truck delivery to all the dealers in the territory affected, which we hoped would be at least as low as the cost of Allentown cement delivered by truck to these destinations.

Q. In 1929 was there any change in the marketing conditions in the Lehigh Valley with respect to trucking?

A. Yes. From 1929 continuing through 1930 and 1931 there was a great increase in trucking throughout the Lehigh Valley territory, and it was trucking which no longer reflected any possible economies or savings in truck delivery. It was, in reality—

Mr. Wooden: If Your Honor please—

Mr. Leisure: Let him finish his answer, please.

Trial Examiner Norwood: Yes, let him finish.

26845 Mr. Wooden: All right.

A. It was, in reality, a form of price warfare in which some manufacturers were taking advantage of the assistance of an unregulated trucking medium giving the customers price concessions.

The most common method by which this was done was to quote at delivered trucking price; engage a truckman to make the delivery and pay him an excessive trucking rate which he, in turn, refunded part to the buyer in the form of a rebate or concession.

There were also many cases in which certain manufacturers, confronted by truckload competition, having their plants so located that they couldn't meet the competition by truck, made adjustments in their f.o.b. car price in an effort to meet this competition, b since the physical characteristics of the two forms of delivery are so different, it was practically impossible to make a car price that would be competitive. They would either fail to meet the trucking price, or beat it, and that, in turn, established a condition which the trucking company set out to try to meet or overcome.

Mr. Wooden: Your Honor, I move to strike that part of the witness' answer that has to do with costs of trucking and rebates given by truckers to purchasers as being obviously based on hearsay and not within this witness' personal knowledge.

26846 Mr. MacIntyre: It has not been shown that this witness, or the witness' company, operated any trucking company, and, therefore, was directly acquainted with the trucking costs incurred by such operation by truck.

Trial Examiner Norwood: Well, the "therefore" doesn't follow.

Mr. MacIntyre: Well, there has been no foundation laid to show that.

Trial Examiner Norwood: He may know about trucking rates and not necessarily—

Mr. MacIntyre: Talking about economy—not talking about rates, talking about economy of trucks, Your Honor please.

Trial Examiner Norwood: Yes. I should not like to pass on that without seeing it typewritten. I will defer the ruling on it.

Mr. Leisure: If Mr. Wooden wants to go into it on cross-

examination, and make it admissible and subject to a motion to strike, why, that would be a very proper way to do it.

Trial Examiner Norwood: I shall defer the ruling on it.

Mr. Wooden: It is subject to a motion now.

Trial Examiner Norwood: Go ahead.

By Mr. Leisure:

26847 Q. Now, Mr. Bowen, with respect to your experience with your dealers, during this period of time, did you know how they regarded trucking, when trucking became widespread or more widespread in 1929?

A. I knew how a great many of them regarded it.

Q. Will you tell us, briefly, your experience with respect to that situation?

A. Well, briefly, at the outset, the attitude of most dealers was favorable to trucking. They thought
26848 that it involved elements of convenience and economy, and a great many dealers expressed themselves as thinking that it was the method of delivery of the future.

Within a very short time, however, that sentiment changed very materially.

Q. Well, did you become aware of this change, and the reasons for it?

A. Yes, I did.

Q. Will you tell us, please, about it?

A. As time went on, we were told by a great many dealers that the benefits, advantages, that they had anticipated from trucking were more than offset by its adverse effects, and we received a tremendous number of complaints from dealers that our own truck sales—

A. (Resumed.) —were operating in such a fashion that we were not giving to our dealers the protection in their markets which we had assured them we would give them.

Q. You have stated that the dealers expected some kind of protection within their markets. Can you tell us whether or not this is a different kind of protection than
26849 dealer protection that you have already mentioned?

A. Yes, it is.

Q. What is it?

A. Our normal method of selling cement through dealers is to sell through only a limited number of dealers. In most markets we sell through only one dealer. In mar-

kets of somewhat large size we may sell two or three dealers. In the large metropolitan markets we sell a great many dealers, although seldom, if ever, do we sell all of them.

Now, when we solicit a dealer to sell our product, and when we say to him, "We would like you to handle Lehigh cement, and if you will do so we will sell no one else in the market but you, our sales organization will be working with you and for you, and any business that we can get in this market will go through you," we are endeavoring to set up a permanent relationship that will be mutually advantageous and helpful.

We found that when we were selling cement, either by truck, or to trucks, we were unable to give our dealers that protection which we had promised them, and which we think they had a right to expect from us. When we sold to dealers—to their own trucks at the mills—we had no assurance that the dealer who bought from us upon the assumption that the cement was going to his own market, would not take that cement directly into the market of some other Lehigh dealer.

26850 Even when we sold by hired trucks, and sold at destination prices, the same thing frequently happened, where it was a simple matter for the buyer to make a private arrangement with the truckman to take the cement not to his own market but through some other dealer's market. Those sort of cases existed by the score and jeopardized our dealer relations to a very large extent.

This entire period from 1929 to 1932 amounted to a state of gorilla warfare in which the manufacturers were engaged in a bitter competition and operating on unknown and often entirely fictitious trucking rates.

Q. Now, there has been used here the word "gyp" trucking. Are you familiar with that phrase,—have you heard it?

A. I have heard it many times. We used it.

Q. What does it mean, in your experience?

A. We used it to apply to the smaller type of truckman, who bought a few trucks with a very low down payment, or monthly notes which he had to meet, and whose sole interest was in getting in some money each month, and who would make ruinously low rates without any regard to anything except his desire to get cash.

26851 Q. Now, following on down chronologically, Mr. Bowen: Did Lehigh at any time make any additional change for truck loading in the Lehigh Valley—I mean, any additional charge?

A. Yes, we did, for a time.

Q. What was the purpose of this charge?

A. For a time we found some of our competitors quoting f.o.b. mill prices 15 cents per barrel higher than their mill base figures, and to some extent we followed
26852 those quotations as a means of recovering at least part of the extra cost of loading trucks as compared to loading cars.

Q. Well, when was this 15-cents charged, Mr. Bowen?

A. As I recall it, it was during 1929; although it wasn't a charge that we applied to all our customers, or all our shipments.

Q. Do you know whether your competitors in the Lehigh Valley were following any such practice in respect to a 15-cent differential?

A. I found that a great many of them were although I didn't find that they were doing it in any uniform or complete way. What we did: Where we found competitors quoting prices that included such a 15-cent charge, and if we could do it and still have our cement reach destination at a cost that was competitive, we would follow. If we found that our price with 15 cents added made the cost of cement at destination higher, we didn't do so.

Q. Now, are there any other instances when you did not?

A. By and large, we did not do it in any case where we found that to do so would make our prices such that our costs at destination would be out of the competition. We made whatever adjustments or prices we felt were necessary to hold the business.

Q. Do you know, Mr. Bowen, in what year you first applied the 15-cent differential to Lehigh Valley mills?

26853 A. It was some time during 1929.

Q. As to your competitors, do you know whether or not any of them made announcements or informed their trade what they were doing with regard to 15 cents for delivery for truck?

A. Yes. We found that in some cases competitors issued quotations naming f.o.b. mill prices which seemed to include such a 15-cent charge.

Q. Did Lehigh ever maintain a warehouse at Conshohocken, Pa.?

A. Yes, we did.

Q. When did you establish your warehouse there, Mr. Bowen?

A. Some time during the early part of 1931.

Q. Where is Conshohocken?

A. Conshohocken is a point about 10 to 12 miles north of Philadelphia, and is the location of the plant of the Valley Forge Cement Company.

Q. What was the purpose of establishing this warehouse? What was your purpose?

A. We established it in order to make truck sales to meet the competition of truck sales from the Valley Forge mill.

Q. Well, how did you arrive at the prices quoted with regard to the deliveries made from your warehouse?

A. We found that the Valley Forge plant was selling at f.o.b. mill prices, and when we established our warehouse at that point we sold at the same f.o.b. mill price the Valley Forge plant was selling.

26854 Q. Did you have much business adjacent to the Philadelphia territory, Mr. Bowen?

A. Yes. The territory into which the Valley Forge mill was selling by truck was principally the suburban territory around Philadelphia which constitutes a very large market for cement, and a territory in which we had always enjoyed a very substantial business.

Q. Into what sales territory were deliveries by truck made from your Conshohocken warehouse?

A. Principally into this Philadelphia suburban territory, and to points adjacent to what is generally recognized as the suburban territory.

Q. From what you have said I take it that is a substantial consuming area, is it?

A. It is a very substantial and important area.

Q. Now, prior to the operation of the Valley Forge plant, did Lehigh or any of your competitors ship cement into this area by truck?

A. No. There was little or no cement trucked into that territory before the Valley Forge mill began selling by truck. The distances from that territory to the Lehigh Valley mills would be 70 or 80 miles, and carload deliveries were more economical.

Q. Do you know, Mr. Bowen, when Valley Forge began to sell cement to trucks?

26855 A. As I recall, the plant began operating during 1927, and some months after it began shipping we found that they were making certain sales by truck, and that these sales began to increase quite rapidly.

Q. What effect, if any, did this have on your business in the Philadelphia area?

A. We began to lose the business of many customers that we had sold for years. They took advantage of the opportunity to take truckload sales where they could buy them in smaller quantities than carload lots, and because the cost at destination was, in most cases, lower than our carload prices.

Q. And do you know whether or not Philadelphia dealers picked up cement in Conshohocken?

A. There was not a great deal of cement trucked into Philadelphia proper, but practically all the dealers in the large suburban territories began to take truck deliveries to a greater or less extent.

Q. What did you do about that situation, Mr. Bowen, if anything?

A. For a time we attempted to meet the competition by making truckload deliveries from our Lehigh Valley mills, but this did not prove very satisfactory either from the standpoint of the cost of delivery or from the standpoint of giving our customers satisfactory service.

Q. Did you do anything else?

26856 A. We established a warehouse in Conshohocken.

Q. Yes, but what was your next step then? Did you do anything with respect to this?

A. We established a warehouse at Conshohocken in the early part of 1931. As I recall it, it was about May, 1931.

Q. Now, up to May, 1931, what experience did you have with respect to that?

A. Our experience during the period prior to May, 1931, was that we had been steadily losing business in that territory, found that dealer after dealer was buying cement from the Valley Forge plant. We had been considering several possible ways of dealing with the competition, and had thought for some time of the idea of establishing a warehouse at Conshohocken, but had withheld acting because we knew that the Valley Forge plant was trying to get reduced rates for short distances around its plant.

and knew that if it got those rates that trucking would be uneconomical.

By May of 1931, however, we reached the conclusion that the reduced rates would not be put into effect at any time that we could estimate, and we decided that if we wanted to protect our business in that area we would have to go ahead with our plan to establish a warehouse.

Q. You say that Valley Forge was interested in getting a reduced rate. Did Lehigh attempt to secure a reduction in rail rates from your Valley mills to the Phila-
26857 delphia area, in order to combat this, or to compete with the Valley Forge mill?

A. No, we did not. We knew that any effort that we might make along that line would necessarily involve a complete overhauling of the rate structure in the eastern territory, and we knew there was no chance of accomplishing that.

Q. Well, now, as to this warehouse, how did you make prices and deliveries of cement from it?

A. We delivered entirely to customers' trucks, and our price was an f.o.b. warehouse price, which was the same price as we found the Valley Forge plant quoting f.o.b. trucks at its mill.

Q. Well, did the maintenance of this Conshohocken warehouse increase your cost of delivery?

A. Yes, it undoubtedly did, but it was the most economical method that we could devise by which we could hope to hold the business we had built up in that territory.

Q. How long did you continue to maintain this warehouse, Mr. Bowen?

A. Until August, 1932.

Q. What happened then?

A. At that time we were informed by the Pennsylvania and the Reading railroads that they had completed negotiations with the Valley Forge plant to establish reduced rates for short distances around the mill, and that as a result of these new rates the Valley Forge mill would discontinue trucking.

26858 Q. Were you approached with respect to this in any way as to the publication of any short-haul rates?

A. Yes, the railroad companies asked us whether we would oppose the rates, and we told them—

Q. Did you object?

A. Beg pardon?

Q. Did you object?

A. No, we told them that we would not oppose the rates, because the railroad companies assured us that the rates would be published only if the Valley Forge plant did eliminate trucking.

Q. Well, now, there is a Commission's Exhibit 4773, by number. It is an announcement issued under date of 7-28-32 by your company that you are discontinuing trucking from Lehigh mill, and that you were closing your Conshohocken warehouse.

Will you look at this exhibit, Mr. Bowen, and tell us the circumstances which led you to make this particular move (handing document to witness)?

A. When we were informed by the railroad companies that the Valley Forge mill would discontinue trucking, we, of course, were glad to close our Conshohocken warehouse, and it seemed to us from consideration of all of the conditions in the market that the time was ripe for us to eliminate trucking entirely from our Lehigh Valley mills.

We had been going through a long and protracted
26859 price war which had brought prices to such low levels that we were losing money very severely, and we knew that our competitors were losing money at least as badly—

Mr. MacIntyre: If Your Honor please—

A. (Resumed) —our—

Mr. Leisure: Let him finish, please.

Trial Examiner Norwood: Let him finish his answer.

A. (Resumed) We sent out announcements that we would discontinue trucking, and that we would increase our prices by 19 cents per barrel. We had made no secret of the fact that we thought that price cutting through trucking and unfair treatment of dealers through trucking stood in the way of any possibility of getting decent prices in the Lehigh Valley territory.

Our move in July of 1932 was in the nature of giving the industry in the Lehigh Valley an opportunity, which they might take advantage of if they saw fit, to restore prices in that territory to the levels which would at least partly reduce losses and at the same time accord fair and honest treatment to the dealers in the territory.

By Mr. Leisure:

Q. After these announcements were issued—

Trial Examiner Norwood: Wait a moment.

Mr. Leisure: Excuse me.

Mr. MacIntyre: If Your Honor please, I at-
26860 tempted to make a motion to strike that part of the witness' answer that dealt with profits of his company, and those of its competitors. There has been no foundation laid to show that he knew what profits his competitors were making. Furthermore, the profits of his company, the question concerning the profits of his company, and the profits of his competitors, is irrelevant and immaterial.

Trial Examiner Norwood: I shall allow the motion so far as striking anything he said with regard to—

Mr. Leisure: Will Your Honor hear from us first, before ruling?

Trial Examiner Norwood: Let me finish my statement.

Mr. Leisure: It won't do me any good if you rule.

Trial Examiner Norwood: I shall allow the motion so far as striking anything he said in there with regard to the competitors losing money.

Mr. Leisure: It is no use of me saying anything now Your Honor has ruled.

I am not offering that for the truth of the statement. I am offering it to show what it is he acted on and why he acted. He is deprived of his statement unless he can state his reasons.

I think Mr. MacIntyre is entirely correct in his motion if it is in regard to the truth of those statements, but if it is in regard to his reason, he can surely
26861 testify to that.

Mr. MacIntyre: If he was told by someone they were losing money, and on the basis of that information he acted to restore his prices, at this much higher level, I will withdraw the motion; if it will be limited to that.

Mr. Leisure: I didn't offer it to show the competitors were losing money; I was offering it as the reason he acted.

Mr. MacIntyre: On the basis of that understanding, I will withdraw the motion.

Mr. Brick: There is no understanding.

Trial Examiner Norwood: He means on the basis of Counsel's statement.

Mr. Brick: If it is on the basis of Mr. Leisure's statement, there is no objection to it.

Trial Examiner Norwood: The ruling is withdrawn, there.

By Mr. Leisure:

Q. After these announcements were issued by your company, what did your competitors do, if anything, Mr. Bowen?

A. Within a comparatively short time our competitors met our advance in prices and also met our action in discontinuing trucking in the Lehigh Valley territory.

Q. During these periods to which you referred, Mr. Bowen, when you delivered to trucks at your Lehigh
26862 Valley mills, how did the volume of delivery to trucks compare with your total shipments? Can you give us that?

A. Deliveries began in 1920, continued in 1921 and 1922, tapered off in 1923 and 1924, and then began rising in 1925, reaching the peak in 1931. We never did keep a record of the total amount of cement shipped from our mills by truck as compared to rail, but the best estimate I could make of our shipments from the Lehigh Valley would be that, at the maximum, the truck shipments did not exceed 10 percent of the total shipments of our Lehigh Valley mills.

Q. Mr. Bowen, did the Lehigh Company deliver to trucks from its Union-bridge mill?

A. Yes, we did. We purchased the Union-bridge plant in 1925. When we began operating it in 1926 we found that the plant had been making some sales to trucks. We continued to do so from the time of our operation.

Q. And did you at any time deliver to trucks from your Fordwick, Va., plant?

A. Yes, but only to a slight extent. Fordwick is located in an isolated, mountainous section of the State of Virginia, and there is comparatively little consuming territory sufficiently close to the plant to permit trucking.

Q. Does the Lehigh Company now deliver to truck at these plants?

A. No, we discontinued truck deliveries from
26863 those two plants in June, about 1930, at the same time we discontinued the Lehigh Valley.

Mr. MacIntyre: Mr. Leisure, is it clear that his answer applies to the Union-bridge and Fordwick? Is that the understanding?

Mr. Leisure: Yes, Mr. MacIntyre. I asked him first about Union-bridge and then I asked him about Fordwick.

Mr. MacIntyre: Thank you.

By Mr. Leisure:

Q. Is Respondents' Exhibit 708 a copy of the announcement which you have just been describing (handing document to witness)?

A. Yes, that is a copy of our announcement in connection with discontinuing trucking from our Union-bridge mill.

Q. How did you quote prices for truck deliveries at the Union-bridge and Fordwick plants, Mr. Bowen?

26864 Trial Examiner Norwood: Were the methods you employed down there the same as the ones you have described to us already?

The Witness: The Union-bridge plant, we had no uniform method of quoting prices and followed about the same variety of methods that we used in the Lehigh Valley. At Fordwick, to the best of my recollection, our prices were at all times in carload destination prices less an allowance of the rail freight.

By Mr. Leisure:

Q. Then there was the 15 cents per barrel differential.

26865 A. Yes; I included that in my answer as one of the methods used on some shipments at Union-bridge.

Q. I merely want to know what did the additional 15 cents represent, Mr. Bowen?

A. Where we found that we could quote the 15-cent higher price and still have our cost at destination competitive, we were glad to do so as a means of trying to get the extra cost of loading trucks as compared with loading cars.

Q. You told us you do not deliver by truck from either of those plants. Had your competitors taken any action with respect to trucking, before you abandoned deliveries to trucks at your Fordwick and Union-bridge plants, Mr. Bowen? Do you know?

A. At Fordwick we didn't have any competitors that were located very close to the plant, so that it would be difficult to make a comparison.

At Union-bridge the closest plants of competitors were the plants of the North American Company at Hagerstown, Md., and the plant of the Medusa Company at York, Pa. Both these mills, to our observation, made certain sales to trucks, although, by reason of the consuming territory around them, I don't think that the volume was ever very high. My best recollection is that both these mills contin-

ned to sell to trucks for some time after we discontinued truck sales at Union-bridge?

Q. Now, you have told us that you have ware-
26866 houses in the City of Washington, Washington, D. C. Is that correct?

A. Yes, we do.

Q. When did you establish those warehouses?

A. We established warehouses in the Georgetown section in 1930, and rented some additional storage space in the southeastern section of Washington in 1935.

Washington is a very large market for bulk cement, since so large a portion of the business here consists of ready-mixed concrete. Therefore, it was necessary for us to supply ourselves with bins from which we could make deliveries of bulk cement, as well as warehouses to make delivery of package cement.

Q. Are both those warehouses still maintained here by your company?

A. Yes, they are.

Q. Can you tell me, Mr. Bowen, the reasons for establishing these two warehouses in Washington?

A. We established the warehouses in order to put ourselves in position to meet the competition of the Lone Star Company who had erected silos in Washington and was selling cement by truck from those silos.

Q. You mentioned the Lone Star Company. Were warehouses established by any other of your competitors around Washington?

A. Yes, quite a number of other competitors have, since 1930, established warehouses or rented warehouses in Washington.

26867 Q. What were the circumstances under which you and your competitors started establishing these warehouses in Washington? You have mentioned the Lone Star was the first.

A. Lone Star Company completed construction of its plant at Norfolk, Va., as I recall it, began producing cement there about 1927. Shortly afterwards we found them starting to erect silos in Washington. I have no doubt that the considerations that led to the construction of these silos was the same as those which led to the construction of silos along the Great Lakes, that is, the ability to reach a market by low water transportation that could not be reached by the higher rail rates.

Washington has always been a market in which our Union-bridge plant had marketed a great deal of its output, and we watched the plants of the Lone Star Company with considerable concern because if we were to be driven out of the Washington market we had nowhere else to go with our Union-bridge products.

We resolved, therefore, that when the Lone Star operation got under way in Washington that we would provide ourselves with facilities that would enable us to hold our business in the Washington market, and following that line of reasoning we proceeded to provide ourselves with warehouses and bin facilities.

Q. Now, as to price, did the establishment of the
26868 Lone Star services, to your knowledge, bring about any change in the price at Washington?

A. Well, I can't say that the establishment of the silos in and of itself resulted in reduction of prices in Washington; but it is a fact that during the time since the silos began operating, the Lone Star Company has come to quote prices in Washington that are considerably lower than prevailed previously. We had found that our prices quoted on our Union-bridge mill were the lowest prices in Washington, but we have found the Lone Star Company quoting prices that figured lower than we could figure on Union-bridge, and those prices are lower now.

Q. And you have met those lower prices?

A. Yes, we have in each case met those lower prices.

Q And, as to that, what has been your experience with respect to these warehouses,—how have they worked out, in your experience?

A. They have worked out entirely satisfactorily in permitting us to meet our competitors and to hold the larger portion, at least, of the business that we have in the past had in this market.

Q. I think you have told us that you did trucking at the New Castle, Pa., plant; is that correct?

A. Yes, we have.

Q. When did trucking begin at New Castle, Pa., Mr. Bowen?

26869 A. Our records don't go back of 1923, but I have no doubt that some trucking began there in the 1920 period that I have described before.

Q. Have you ever abandoned trucking at New Castle?

A. Yes, we discontinued trucking at New Castle during the latter part of 1931.

Q. Why?

A. Because we found that competitors in that area had discontinued trucking, and since we had undertaken trucking only to meet that competition we were glad to discontinue it, too.

Q. Did the Lehigh Company at any time have a warehouse at Pittsburgh?

A. Yes, we did, for a time.

Q. You say "for a time." What was your purpose in putting in warehouses there, Mr. Bowen?

A. We found that two of our competitors that had plants in Pittsburgh, Universal-Atlas Company, and the Green Bag Cement Company, were selling by truck at prices which resulted in lower costs to destination than we were quoting.

We also found that some of our competitors during 1930, the principal one whom I recall is the Pittsburgh Plate Glass Company, had established warehouses in Pittsburgh in order to meet the trucking competition from the mills. This situation affected our business to such an extent that we decided if we wanted to hold any part of the Pitts-
26870 burgh business we had enjoyed in the past, we would have to provide ourselves with similar facilities, and we did.

Q. I do not recall whether you told us when you did that?

A. As I recall—

Mr. Paulson: I object.

A. (Resumed). It was in 1930.

Mr. Paulson: It is repetitious.

Trial Examiner Norwood: Overruled.

By Mr. Leisure:

Q. For how long a period was that warehouse maintained?

A. Oh, the latter part of 1931.

Q. Why did you discontinue it, Mr. Bowen?

A. Because we found the two mills at Pittsburgh discontinued trucking from the mills, found that our competitors who had established warehouses discontinued them, and we were very glad to discontinue ours.

Q. I want to call your attention to a Commission's exhibit bearing No. 1043-3-H, which purports to be a letter from a Mr. H. C. Oliver to a J. B. Large, dated August 27,

1931, and which states that there is a movement on foot to have Columbia, Lehigh, Medusa, Bessemer, and West-Penn announce the discontinuation of trucking effective December 1, 1931.

Will you look at this exhibit, please (handing document to witness)?

(Witness examines document.)

26871 Q. Do you know anything about any movement such as the one referred to here with respect to the discontinuance of trucking, Mr. Bowen?

A. I do not, except that I know that the sentiment among the dealers in the Ohio and Western Pennsylvania territory was perhaps more strongly hostile to trucking than the dealers in any other part of the country.

Trial Examiner Norwood: Let me see that exhibit, will you, please?

(Witness hands document to Trial Examiner.)

By Mr. Leisure:

Q. This Exhibit 1043-3-H, Mr. Bowen, may have been substituted for an original which is the same document bearing a different number. Your answer applies equally to that exhibit?

A. Yes, sir.

Q. Thank you.

Well, was the Lehigh Company a party to any movement, or any conferences, or discussions to discontinue trucking, Mr. Bowen?

A. No, we were not, no particular occasion for anyone to get our views on trucking. We have never hesi-

26872 tated to make it clear to dealers, railroads, or anyone else who inquired, that the Lehigh Company did not want to deliver by truck, and was doing so only where and in such cases as competition compelled it to.

Q. As to this exhibit, and this description of a movement,—what have you to say, if anything, as to any particular movement at that time?

A. I think from my knowledge and observation at the time that there was a great hostility on the part of dealers to trucking, and that the railroad companies were endeavoring to get the business which they had lost to trucks.

Q. Do you know Mr. W. W. Campbell, who appeared here in the record as former president of the National Building Supply Association?

A. Yes, I do.

Q. Did you have any conversation with him at any time concerning trucking?

A. I recall one conversation with him in which that subject was discussed.

Q. When was that, Mr. Bowen?

A. To the best of my recollection, it was some time in 1931 in our New York office.

Q. Had you met Mr. Campbell prior to that time?

A. Oh, yes, Mr. Campbell is a dealer at New Wilmington, Pa., and was a customer of our company. We
26873 had known him in that capacity for a good many years, also had known him as president of the Western Penn Building Supply Dealers before he became president of the National Building Supply.

It was nothing unusual for him to call at our New York office, just as many hundreds of dealers call there whenever they are in the city.

Q. Now, you suggested that you remembered a conference. Suppose you tell us about it.

First, was there anybody else there, do you know?

A. Yes, Mr. Swett of our company was there, too.

Q. Suppose you tell us about it, at the time that you mention.

A. I recall that the conversation turned to the subject of trucking, as it frequently did with dealers who called on us those days.

Mr. Campbell expressed the feeling that trucking was very bad for the dealers, and I have no doubt that we said, which we said to almost every dealer who discussed the question with us, that we felt very keenly the fact that under trucking we were unable to protect our dealers in their respective markets as we had undertaken to do.

I do recall that Mr. Campbell mentioned that he was working closely with the railroads in a strenuous effort to have the railroad companies try to get back the business which they had lost to trucks.

26874 Q. Did he ask the position of your company in any way?

A. No, he did not.

Q. Or did he make any kind of a request of you?

A. He asked nothing of us nor did we ask anything of him. We merely discussed the question of the effect of trucking from the standpoint of himself as a dealer, and ourselves, and, as I recall it, we felt just about the same about the evils of trucking as he seemed to feel.

Q. Did you have any other contact with Mr. Campbell with respect to trucking, Mr. Bowen?

A. No.

Q. I would like to call your attention to another Commission's exhibit, and it bears the number of 1043-B. It is dated May 4, 1932, and purports to be from a Mr. A. P. Myers, of Green Bag, to Mr. Eugene Morris of C. F. A., and Mr. Myers states:

"In November of 1931 we agreed to discontinue the trucking as of December, 1931, at Neville Island, this agreement to continue until July 1, 1933, with the understanding that certain things be corrected in the meantime."

Do you know anything about any such agreement, Mr. Bowen? I will show you this exhibit (handing document to witness).

A. I know that there was certainly no agreement between the Green Bag Company and the Lehigh Company.

26875 Q. Do you know of any agreement for the discontinuance of trucking in this area at all?

A. I know of none, and I know that the Lehigh Company was not a party to any.

Q. When did Lehigh discontinue to sell to trucks at its Pittsburgh warehouse?

A. Late in 1931, as I recall it.

Q. Had Green Bag or any other companies discontinued at that time?

A. Yes, they had.

Q. What other companies?

A. Both Green Bag and Universal, and the several companies who had previously maintained warehouses in the Pittsburgh area.

Q. And did the Green Bag Company resume trucking in July of 1932?

A. No, they did not.

Q. Did any short-haul rates go into effect in that area at that time?

A. No, there did not.

Q. Did there ever come a time when short-haul rates went into effect in the Pittsburgh area?

A. Yes. Short-haul rates in that territory went into effect in the early part of 1937.

Q. Did your company have anything to do with
26876 obtaining those rates?

A. No, we opposed the efforts to get those rates.

Q. I desire at this time to call your attention to another Commission's exhibit, Mr. Bowen, bearing 1043-H, which purports to be a memorandum dated May 23, 1932, signed by a Mr. H. S. Oliver, addressed to "J.B.L." is the initial used, and the part I want to call your attention to is this:

"Now agreeable to the establishment of short-haul rates."

What was your position, Mr. Bowen? Were you, in 1932, agreeable to the establishment of short-haul rates?

A. May I see the exhibit?

Q. Yes, sir (handing document to witness).

A. Yes, at that time, at the time indicated by this exhibit, we were agreeable to the establishment of short-haul rates. Originally we had opposed such rates for the very simple reason that we were reluctant to have any of our competitors gain a rate advantage over us with respect to the markets that might be closer to their mills than to ours.

Upon giving our whole attitude further consideration, however, it seemed to us to be somewhat inconsistent that we should be as strongly favorable as we were to
26877 the elimination of trucking and yet stand in the way or oppose short-haul rates that might make trucking uneconomical where those rates existed. We therefore changed our opposition and were willing to have short-haul rates published without opposition on that part.

Q. Did you make your position known to anyone?

A. Yes, to the railroads.

Q. Have you told us fully, Mr. Bowen, the circumstances which induced you to change your position and again oppose the reduction of short-haul rates?

A. Our position, in general, was based upon the fact that we thought that it was inconsistent for us to continue to oppose them and still, at the same time, be unfavorable to trucking.

Q. Well, specifically, what had been your position in 1937?

A. Well, in 1937 we opposed the short-haul rates that were proposed in the territory around Pittsburgh. That opposition, however, we didn't think at all consistent with the position we took in 1932. We opposed the rates around Pittsburgh because we thought that they covered an

unduly wide territory, and went beyond the bonds of what could reasonably be considered short-haul rates designed to offset trucking competition.

We didn't oppose the publication of short-haul rates around Pittsburgh that might be in proportion to short-haul rates in other localities.

Q. Did the Lehigh Company deliver cement to trucks at its Buffalo mill?

26878 A. Yes.

Q. When?

A. Beginning some time in 1931 and continuing until the present time.

Q. Did it deliver cement to trucks prior to 1931?

A. Prior to 1931 we sold only in cars.

Q. What was the reason for the practice of delivering cement to trucks in 1931? How did that originate?

A. Beginning in 1931 we found that our competitors, the Huron Portland Cement Company, who operated silos at Buffalo to which cement was supplied by water from Alpena, Mich., were making quotations on cement for truck delivery. We met those quotations as to price and conditions of sale.

Q. Are those all the points from which Huron delivered to trucks; the points from which Huron delivered to trucks?

A. No, Huron delivered to trucks in Cleveland, Oswego, Toledo, and numerous other lake ports.

Q. At the present time do you deliver to trucks at your Buffalo mill? Have you told us that?

A. We do and have ever since 1931, followed whatever prices and methods of sale were established by the Huron Company.

Q. Is that to the trucks of your customers?

A. Deliveries in Buffalo are made almost entirely by trucks hired by us and at delivered prices although there is a very small amount of cement sold to customers' trucks at the mill.

26879 Q. How do you determine this policy, then, Mr. Bowen?

A. Our policy at Buffalo has been that we truck only because our competitors compel us to, and our policy has been to meet whatever terms and conditions of sale may be established by our competitors.

26880 JOHN C. BOWEN thereupon resumed the stand and testified further as follows:

Direct Examination (Continued) By Mr. Leisure.

Q. Mr. Bowen, before the noon recess we were discussing, talking with respect to your Buffalo mill. I would like to ask you now how the sales by truck compare to your total sales in the Buffalo mill?

A. Again, we have kept no figures, but I know that the truck sales are a comparatively small part of the total shipments. Trucking is quite unpopular with many customers in the Buffalo market and ordinarily they do not avail themselves of it.

Q. Has the Lehigh Company a silo at Cleveland, Mr. Bowen?

A. Our affiliate company, the Great Lakes Company, has a clinker grinding plant and silos at Cleveland.

Q. Do you deliver to trucks from these silos?

A. Yes, we do.

Q. How long have you been doing that?

A. Since the early part of 1931, and continuing to the present time.

Q. What were your reasons for establishing these
26881 silos at Cleveland, and the grinding plant there?

A. Cleveland had for many years been one of the strongest markets for the Lehigh Company. Our method of shipment had been by car from our plant at New Castle, Pa. Several years prior to 1929 the Huron Company established silos at Cleveland supplying these silos with cement brought in by water from Alpena, Mich. We found it increasingly difficult to hold our position in the Cleveland market, and when the Buffalo plant was complete we felt that we could make a good move by installing clinker grinding equipment at Cleveland, moving the clinker by water from Buffalo.

We felt sure that this would result in getting cement at Cleveland that would cost us less money than cement we might continue to slip into Cleveland by rail from either New Castle, or Buffalo.

Q. Do you mean by that—and tell us whether you do or not—that the Huron establishment of silos affected your position?

A. Yes, I do mean it affected our position quite severely and let us to feel we must provide some more effective means of dealing with the competition than continued rail shipments.

Q. When was the grinding plant placed in operation, if you know?

A. My recollection is we began operating and shipping from that plant early in 1929.

Q. You say you began operations at Cleveland 26882 the grinding plant in 1929, and I think you told us you commenced making deliveries to trucks in 1931. What, if anything, was the policy of the Lehigh Company with respect to delivery to trucks during the interval?

A. When we began shipping from Lehigh, and, until the early part of 1931, we sold only in carload lots by rail delivery. The Huron Company was at that time selling to trucks but by that time there was already a considerable sentiment among the buyers in the market unfavorable to trucks. It seemed to us to be good sales strategy to attempt to sell our product on a carload basis, and our sales argument to the dealers was that since they seemed to be rather unfavorable to trucking, and since we did not undertake to truck, the dealers should give us their business rather than give it to their competitors, and thereby discourage trucking.

Unfortunately, this strategy didn't work out very successfully, and by 1931 we concluded that we should, and we did, begin to meet the competition by truck sales.

Q. Does your company operate a warehouse at Oswego, N. Y.?

A. Yes, we do.

Q. When did it begin operating that warehouse?

A. During the early part of 1938.

Q. And what were the purposes of that?

A. About a year or two before that time the Huron Company had begun distributing cement from Os- 26883 wego, bringing the cement to Oswego by boats. At first they stored cement on the boats, used the boats as warehouses and then, later on, they built silos along the lake at Oswego.

These Huron sales by truck in the territory around Oswego cut sharply into the good dealer business we had built up in that vicinity, and in order to continue to hold those customers we decided to establish warehouse facilities at Oswego and meet the Huron competition.

Q. What has been your experience, Mr. Bowen, as to delivery to trucks at the Oswego warehouse? How did it work out?

A. It has worked out quite well, in that we have continued to hold our customers in that territory, almost entirely.

Q. Has the Lehigh Company a warehouse at Miami, Fla.?

A. Yes, we do.

Q. When was it established?

A. In the fall of 1935, as I recollect it.

Q. Under what circumstances did you establish and operate this warehouse?

A. For a year or two prior to that time there had been a very great increase in the volume of foreign cement imported in Miami. This cement was sold at prices very much lower than prices quoted by domestic manufacturers. There had been a number of price reductions in Miami, made, as I recall it, by the Florida Company, and which we had met.

Shortly before September, 1935, the Florida Com-
26884 pany established a warehouse at Miami and sold to trucks there, and, in order to hold our position in the market, we decided to establish similar warehouse facilities and to sell to trucks.

Q. Do you now operate the warehouse at Miami?

A. Yes, it is operated constantly since the latter part of 1935.

Q. Do you deliver to trucks from this warehouse?

A. Yes, our sales are entirely to customers' trucks at the warehouse.

Q. Has that been true since 1935?

A. Yes.

Q. Do you make sales in this Miami territory by any other means than by truck from the warehouse, Mr. Bowen?

A. Yes, we continue to ship a considerable quantity of cement into Miami by direct rail shipments consigned to customers in Miami, and sold on an f.o.b. car basis.

Q. You say "consigned to customers." From what mill do you refer, as to that?

A. From our Boyles, Ala., mill.

Q. How do your shipments by truck from the warehouse in Miami compare with your shipments from the mill by car?

A. They vary considerably, depending upon the particular locations in the Miami market, where the demand exists. Over a period of time I would say that they are about equal; that is, that the direct carload ship-
26885 ments are about the same in volume as the sales from the warehouse.

Q. Now, you have told us that you had a mill at Mitchell. Have you delivered to trucks at that mill?

A. Yes, to a somewhat limited extent.

Q. Well, during what period was that?

A. Without having any exact records, I feel sure that the deliveries began some time during the period between 1920 and 1923.

Q. Do you recall what the circumstances were that caused you to begin the practice of delivering to trucks at Mitchell, Mr. Bowen?

A. Yes, the nearest competitive mill to our Mitchell, Ind., plant is at Speed, Ind. There is not a very large or substantial cement-consuming territory between Speed and Mitchell, but there were occasional road jobs in that territory, and some little dealer business. Where we discovered that truck prices quoted by the Speed mill were bringing cement to customers' destinations at lower costs than we were quoting, we undertook to meet the competition by truck shipments from our Mitchell plant.

Q. How long did that practice continue, at the Mitchell plant?

A. As I recall it, until late 1931 or early 1932.

Q. What happened then? Why did you discontinue?

A. We found that our competitors had discon-
26886 tinued such sales, and when we had no trucking competition to meet we were glad to discontinue our trucking.

Q. Have you had any deliveries to trucks at the Mitchell plant since 1931?

A. No.

Q. Have you ever maintained a warehouse at Chicago, Mr. Bowen?

A. Yes, we have.

Q. When was the warehouse established there?

A. To the best of my recollection, it was in the latter part of 1929.

Q. How did you happen to establish a warehouse at Chicago?

A. We established it in order to meet trucking competition with which we were confronted from silos of the Petoskey and Manitowoc companies, the warehouse of the Marquette Company, and from the Buffington mill of the Universal-Atlas Company.

Q. Well, how did the deliveries from the warehouses of your competitors affect your business?

A. We found that in many cases these competitors were selling at either truckload delivered prices, the same as at f.o.b. car prices, or at f.o.b. mill or silo prices, which brought the cement to the customers' destinations at lower costs than the prices we were quoting. Under those circumstances we found it increasingly difficult to get business, and after we had experienced that condition
26887 for a considerable length of time, it seemed to us that the establishment of a warehouse from which we could meet that competition was the only practical course we had open to us.

Q. Do you recall how long you maintained that warehouse?

A. Until the early part of 1932.

Q. And you then discontinued it?

A. Yes.

Q. Why, Mr. Bowen?

A. Well, I should say first that the Chicago warehouse was a somewhat costly means of distribution. The cost was a good deal higher than we had experienced in establishing similar facilities in some other locations. In the early part of 1932 we found that our competitors, to meet whose trucking competition we had established the warehouse, were quoting prices which were on such a level that we were again able to secure what we thought was a reasonable amount of business at our carload quotations.

When we discovered that we could get some business in Chicago and hold our dealer customers by means of our carload quotations, we were very glad to close the Chicago warehouse and relieve ourselves of the cost which it had caused us.

Q. Did the competitors to which you referred a few moments ago, did they continue their warehouses?

A. So far as I know, most of them have done so.

26888 Q. What was your experience in discontinuing? Could you or could you not make more money by selling by cars than by continuing the warehouse?

A. Yes. We found that by relieving ourselves of the warehouse cost and continuing car shipments we were placed in a better position with respect to making a profit with our Chicago business than with a warehouse.

Q. Have you ever maintained a warehouse at Milwaukee?

A. Yes, we have.

Q. Tell us when and under what circumstances you established one there, if you know?

A. We established that warehouse in the early part of 1931 in order to deal with the trucking competition from silos and warehouses established by the Huron and Peoskey companies, and by the Marquette, Universal, and, I think, Dewey. We had always done a great deal of business in the Milwaukee market. Finding that business severely affected and rapidly dwindling we decided that in spite of the fact that it was a difficult market in which to continue, we would endeavor to hold our business and that we could best do so by establishing a warehouse.

Q. How long was this warehouse operated?

A. Until about 1932.

Q. And then what happened?

26889 A. Here, again, we found our competitors quoting prices, by May of 1932, for truck delivery from their silos or warehouses were such that we could again get some business as the result of our carload quotations, and because we could get some business in that fashion, because we were finding the burden of the warehouse costs at Milwaukee a considerable one, we decided to close the warehouse and continue carload shipments.

Q. From what mill is cement shipped to your Chicago and Milwaukee warehouses?

A. From our Oglesby, Ill., mill.

Q. And how was it shipped?

A. By rail, to the warehouses.

Q. In both cases?

A. In both cases.

Q. Can you tell, Mr. Bowen, whether or not any of your competitors still maintain warehouses at Milwaukee?

A. Yes, a great many of them do.

Q. What were your reasons for discontinuing? Can

you tell us whether or not you expected your competitors would eliminate their warehouses?

26890 A. No, we had no idea what action any of our competitors might take.

By Mr. Leisure:

Q. Did your abandonment of your Milwaukee warehouses affect your business around Milwaukee?

A. We have continued to be able to secure a small amount of business in that market.

Q. How do you arrive at the price, then, at Milwaukee?

A. We find prices quoted in that market which reflect the fact some of our competitors are considered in Milwaukee as a base point, and figuring their prices accordingly.

This is one of the cases where the actions of a competitor in establishing a base point makes the market exceedingly unattractive to us and operates to drive us out of the market in just the same fashion as some of the bases we have established have tended to drive our competitors out of the markets.

Q. You told us the other day, Mr. Bowen, that you do not ship into Michigan, I believe, at the present time?

A. That is correct.

Q. I neglected to ask you then, has the Lehigh Company ever shipped into Michigan in any volume?

A. Yes, in its early history the Lehigh Company shipped a very large volume of cement into Michigan, but as

26891 new plants were built in that area, and those plants established themselves as basing points, we were gradually driven out of that market, since we found ourselves unable to meet the competition.

Q. Did you have any salesmen in Michigan?

A. No.

Q. Has the Lehigh Company ever delivered to trucks from its Birmingham, Oglesby, Mason City, or Metaline Falls mills?

A. No.

Q. Why not?

A. Because we have not in those territories found any of our competitors trucking, and throughout the entire period since 1920 it has been our policy to make deliveries by truck only when we found competition on that basis which we felt ourselves under the necessity of meeting.

Q. Has the Lehigh Company ever delivered to trucks from its Iola, Kansas, mill?

A. Yes, to some little extent.

Q. You say "to some little extent." When was that?

A. Again, during the same period; undoubtedly, beginning some time in the early '20's.

Q. Well, do you at the present time deliver to trucks from that mill?

A. No, we discontinued any deliveries to trucks at Iola in the early part of 1933.

Q. Can you tell me whether or not your com-
26892 petitors delivered to trucks in that territory?

A. There had been some deliveries to trucks by competitors, but along about the beginning of 1933 we discovered that our competitors discontinued their truck sales, and we were very glad to do so also.

Q. From what you have just said, I take it, then, your company was not the first to discontinue delivery to trucks in that territory, Mr. Bowen?

A. No, our principal competitor, the Lone Star Company, at Bonner Springs, had discontinued trucking some time before.

Q. We have been discussing, Mr. Bowen, these various steps taken by your company with its experiences with, and in connection with, trucking. I would like to ask you, did anyone associated with your company disclose any of these steps to any of your competitors prior to the time that you took any of them?

Mr. Wooden: Your Honor—

Trial Examiner Norwood: Now, wait a moment.

Mr. Wooden: —I think it is obvious that the witness cannot know what anyone and everyone connected with his company did.

Mr. Leisure: Oh, to the best of his knowledge.

Trial Examiner Norwood: Let him state what his knowledge is.

Mr. Leisure: I am asking him for his knowledge,
26893 as an executive of the company.

Trial Examiner Norwood: The objection is sustained as the question stands now.

By Mr. Leisure:

Q. Let me rephrase it, Mr. Bowen, and I want to confine it with respect to your own knowledge, of course.

As to any single one of these steps, or as to all of them, whether they were disclosed in any manner by your company to any of your competitors, prior to the time that the steps were taken.

A. I am sure that they were not.

Q. Did you know at the time that you took these steps what action your competitors proposed to take as the result of the steps which you took?

A. We did not.

Q. Was there any agreement or understanding with your competitors as to any action you took, or as to any action they took, or that you proposed taking?

A. There was not.

Q. I would like to call your attention to another subject:

You mentioned that there was a price war in the cement industry in 1931; is that correct?

A. Yes.

Q. What was your experience with that as to the immediate cause?

26894 A. The immediate cause was, undoubtedly, a sharp falling off in demand for cement.

Q. And what price conditions existed at that time?

A. During the latter part of 1930, and continuing into 1931, we found a great many cases where competitors were offering to sell and selling, at prices lower than our prices, and lower then the published prices of those competitors. In other words, they were secret price concessions below competitors' published prices.

Q. Well, what was the policy of the Lehigh Company, Mr. Bowen, with regard to making sales below its published quotations?

A. Our policy was not to do so. For 20 years prior to that time we had been operating as a one-price—in a one-price policy, by which I mean that we published our quotations and sold in all cases only at those published quotations. We thought that that was the only sound open way to do business, and adhered to it.

Q. Now, how did it work out, in your experience? I mean, of course, was or was not Lehigh able to sell its product at its published quotations, in competition with these prices that you have mentioned?

A. No. No. To a constantly increasing extent we

found ourselves unable to sell and lost a great deal of business as a result of such quotations.

Q. And did you find whether or not the com-
26895 petitors gave the same secret prices to their entire trade?

Mr. Wooden: Your Honor, the last several questions have been open to the same objection that I now make to this one, and that is the witness could not know what was secret, and the extent of it, and the details regarding secrecy by reason of the very fact of secrecy.

By Mr. Leisure:

Q. Mr. Bowen, if there is any ambiguity as to the word "secret," I, of course, have reference to a difference between published quotations and prices actually made that came to your knowledge.

26896 A. Yes.

Trial Examiner Norwood: Now, I want you to give us any factual information that you might have as to any particular occasions that you can tell us about. Make your answer factual to that question, and I will overrule the objection, with that understanding.

A. I will say that we found a great many cases in which competitors were making sales at other than their published quotations, and we found that they did not make the same price to all customers, but in some cases gave customers lower prices than the published quotations, while in other cases they did not give similar concessions.

By Mr. Leisure:

Q. Now, did the Lehigh Company endeavor to meet these secret prices where it had reason to believe they were being quoted to a customer to whom Lehigh was trying to sell its product?

A. No, sir; we did not.

Q. What did you do, Mr. Bowen, to meet this price situation?

A. During the latter part of 1930 and the early part of 1931 we found a tremendous increase in the number
26897 of situations such as I have described where we were unable to sell at our published prices because our competitors were offering our customers price concessions below their published prices. Because we were unable to meet those price concessions in individual cases but wanted to handle our business by open quotations, and in

an open way, as we had in the past, we made a number of reductions in our prices, quoting prices on steadily reduced base figures at our mills; all in an effort to reach a level of prices at which we could sell.

These reductions in our prices brought them to very low levels; levels at which we were losing money in a very substantial way. To some extent these successive steps enabled us to sell, but in a very large measure we found that secret price concessions still continued.

The reductions we had made, figuring on our own mills, had, as I said, brought our prices very much below cost. We were still, however, unable to sell our product in a great many instances.

At that time, still in an effort to arrive at prices which we could make openly and which we could sell at, we began in the spring of 1931 to quote prices which reflected base figures at some of the mills of our competitors from which we had found the greatest number of secret price concessions to emanate. In doing this the base figures were in no case lower than the base figures of our nearest mills, nor were they lower than the base figures re-
26898 flected by sales of substantial volumes of cement by those companies.

By and large our action was governed by two considerations: First, we had competition to meet and we had to meet it. Second, we wanted to make our prices open, to maintain those prices publicly, and to treat our customers all in the same manner so that we might hold the same reputation for fair and open dealing that we had tried to build up.

Mr. Wooden: Now, Your Honor, I move to strike that portion of the witness' testimony that goes to the matter of selling below cost, as being irrelevant and immaterial. It may remain, as far as I am concerned, to be simply going to the basis for action taken, but not as to the truth of the statement itself regarding costs.

Without figures from the company's records, and things of that sort, that is no way to prove the existence of a lack of data.

Mr. MacIntyre: We are handicapped, if Your Honor please, in the cross-examination of this witness because we do not have, and they have not produced—

Trial Examiner Norwood: (Interposing) As heretofore.

Mr. MacIntyre: —data which should be produced for the cross-examination on that point.

Trial Examiner Norwood: As heretofore discussed.

26899 Mr. Leisure: Now, if Your Honor pleases, if the witness on the stand, an executive of a company, does not know when he is selling below cost, I don't know who is going to tell us. I do not believe an economist from a college is going to be able to tell us, and this man knows when he sells below cost, and if he does he ought to be able to tell us.

If Mr. Wooden wants to go into that in cross-examination and show that he is mistaken, then he can do that, of course; but when a man who is selling a product tells us he is selling it below cost, that is that.

Trial Examiner Norwood: Well, I consider that that testimony is relevant only for the purpose Mr. Wooden stated.

Mr. Leisure: Well, I do not like to have Mr. Wooden limiting the statement of an official of the company as to whether or not it is truthful or not, that it is below cost, as has been stated. He knows whether it is below cost, and he ought to be able to tell us so.

Trial Examiner Norwood: The testimony, as a matter of course, will be limited to its application to points to which it is relevant.

Mr. Leisure: I am perfectly frank to say that my purpose in adducing this testimony from this witness is, as Your Honor has stated. I haven't asked him about it
26900 for the purpose of showing what their costs were, or anything of that kind, but, at the same time, I do not feel that when a witness says a thing is below cost that we should be met with the objection that it is not offered for the truth of the statement, particularly when an executive of the company, himself, says it, and I think it belongs in just as it is.

Trial Examiner Norwood: The motion is denied.

Mr. MacIntyre: That was not a—

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: On the record.

Mr. Wooden: I do serve notice on the record, Your Honor please, that whenever testimony is given as to costs, as to what costs are, and their relation to price, or the margin between costs and prices, that the Respondents

produce the cost records of the company to show what those costs were, and I mean by that the original cost records kept by the company in the usual course of business, and not a prepared statement for the purpose of this case.

Mr. Leisure: I note—

Mr. Jaques: Your Honor please, I would like to get a ruling. I want to ask a question and just get a ruling on it.

26901 Trial Examiner Norwood: Go ahead.

By Mr. Jaques:

Q. Mr. Bowen, you have just testified that your company was selling below cost and losing money under certain circumstances. I want to ask you if you know that of your personal knowledge?

A. Yes, I do.

Q. And that testimony, therefore, is correct, from your experience?

A. Yes, sir.

Mr. Leisure: As to Mr. Wooden's statement, Your Honor, I want to say that we propose, if we are allowed to do so, to go into both costs and profits very thoroughly before this case is finished, if we are allowed to go into it, and we expect to cover that completely, and to, I think, the complete satisfaction of Mr. Wooden on that point.

Mr. Wooden: Well, since you are giving notice of that, I give notice of my intention to oppose it, not only before the Examiner but before the Commission.

Mr. Jaques: Mr. Wooden, I do not think you got my point in the question. I asked a couple of questions, and you did not object to them.

If you want to object to them I want to get a ruling.

Now, do you want to object to my questions?

26902 Mr. Wooden: No, I don't object.

Trial Examiner Norwood: Now, Counsel has given notice, and, if the Respondent does not produce them, he knows what to do about it.

So, go ahead.

By Mr. Leisure:

Q. Mr. Bowen, to what extent, if any, did you lower base figures in your endeavor to meet these conditions? To what extent did you lower your base figures in your endeavor to meet the conditions which you found in the market?

A. I take it that you are referring to the base figures at our own mills. We had reduced those by 60 to 70 cents per barrel, bringing them at most mill locations below a dollar per barrel, and some as low as 80 cents, as I recall it.

Q. I see. Well, in reducing your base figures, did you reduce the price at points which were not seriously affected by the price cutting which you have mentioned?

A. Yes, we did, and some of our base figures were sharply reduced. The effect was to reduce our destination prices over the whole area covered by that plant. In many cases a good portion of that area had not been as adversely affected by competitive price conditions
26903 as other portions of it. The effect was, of course, to reduce prices in some cases over a territory larger than what—larger than that in which we had discovered the price concessions.

Q. Why did you cover this large area, Mr. Bowen?

A. Simply because we were making our price publicly and openly, and when we reduced our prices we reduced them to all of our customers in the territory concerned.

Q. Well, what was your experience with these reductions of your base figures,—were you able to get business in the territories where the price cutting existed?

A. Only to a slight extent. We found that in many cases, in spite of our reductions, computed in our own mills, that secret price concessions continued, and we were unable to get the business in those cases at our published prices.

Q. Then, what happened, Mr. Bowen, by quoting your prices from a base at the mills of your competitors, what was accomplished?

A. After that happened there was a gradual change in the situation, so that we began to get business. Prior to that action competitors were able to make prices in certain territories secretly and still obtain higher prices from the trade, either in the same market, perhaps, or in adjacent markets, but with our quotations made publicly those competitors very quickly found that they could no longer get business at varying prices, but must take
26904 the price covered by our published quotations.

As time went on we found that the secret price concessions gradually began to clear up and we did begin to get a considerable volume of business at our published prices.

Q. What was your experience? Could your competitors get more than your published prices?

A. No, they could not.

Q. Did they continue to have prices less than your published prices?

A. Oh, gradually, the number of such prices was reduced, and we found that our competitors were to a much greater extent adhering to their own published quotations.

Mr. MacIntyre: May we have the time fixed on all this, Your Honor please?

Mr. Leisure: Yes, we did that.

By Mr. Leisure:

Q. Do it again, fix the time again, Mr. Bowen, please.

A. During 1931.

Q. Will you name the competitors' mills to which you refer as being mills from which Lehigh calculated prices with the aid of base figures?

A. Among them were Speed, Ind., Kosmosdale, Ky., Ada, Okla., Louisville, Nebr., Portland Point, N. Y. Those are what I recall at the moment.

Q. Did you name Painesville, Ohio?

26905 A. Painesville, Ohio, was another.

Q. Was that another one?

A. Painesville, Ohio, was another point.

Q. Had the Lehigh Company ever previously quoted prices, Mr. Bowen, which were later claimed to have put a base on a competitive mill?

A. Yes, we had done so several years earlier, under similar circumstances.

Q. Where?

A. In the case of the plant at Rapid City, S. D.

Q. What were those circumstances?

A. The plant at Rapid City, S. D., was built by the State of South Dakota about 1926. As I recall it, it began shipments either late in 1926 or 1927. It immediately set out to take all of the business in the State. Contractors doing work for the State were compelled to use the State products, while contractors doing private work were subjected to all sorts of political pressure on behalf of the State-made products. Dealers who had bought from us for a great many years were compelled to buy the State product, because their customers, in turn, were compelled to use it.

South Dakota had, for a good many years, been one of the best markets for our plant at Mason City, Iowa, and we felt the loss of the business very, very keenly. We also found at the same time that there were a great
26906 many prices made by the Rapid City plant lower than its published quotations, which resulted in the loss of business.

Mr. Wooden: Your Honor—

A. (Resumed) Because we wanted to protect ourselves to some measure against the unfair competition to which we were subjected, we began about 1927 to quote prices in South Dakota territory calculated with reference to the same base figure at the Rapid City plant that we had previously used at the Mason City plant.

26907 Q. Did this method of quoting prices in South Dakota—well, let me ask you how it worked out from the standpoint of your company, Mr. Bowen.

A. Well, to a considerable extent it enabled us to hold some of our business. The effect was to reduce prices at many destinations, and in a very large measure we have been able to hold at least some of the business we formerly enjoyed in South Dakota.

Q. Now, in figuring its prices, in connection with all these competitors' mills that we have been discussing, did you consider that they were basing or non-basing mills?

A. We were considering only the conditions that were facing us. We weren't theorizing, but we were dealing with actual situations. Whether the plants that were making the price concessions of the kind I described considered themselves as basing-point mills or non-basing-point mills, we didn't know. All we knew was we had competition to meet; that we had to move fast; that we had to make our quotations openly; that we wanted to treat all our customers alike.

The plants may, for all I know, have considered themselves basing-point mills and partly non-basing-
26908 point mills. At least their quotations showed definitely that they were no longer what we considered non-basing-point mills.

Q. Do you recall, Mr. Bowen, whether the status of these mills as basing mills change?

A. In some cases the status of the mills did change later to what we considered non-basing-point mills. In other

cases they have continued basing-point mills right up to the present time.

Q. How was the status of the mill changed to non-basing-point mills, Mr. Bowen?

A. Where it was changed it happened through the companies operating those mills issuing published quotations which did not reflect the base figure at those mills and if and when its quotations were followed by ourselves and other companies then the plant's status was what we called a non-basing-point mill.

Q. I neglected to ask you, I believe, about that State-owned plant. Was the status of the State-owned plant as a base mill subsequently changed?

A. No, it has not changed at all since 1927. Each time, so far as I know, that we have made a change in our base figures, at Mason City, either upward or downward, the State plant at Rapid City has made a corresponding change in its own base figures, even though it might, many times during that period, have undertaken to revert to a non-basing-point status.

Q. Have you ever quoted prices in a manner 26909 which gave you two base figures at a given mill?

A. Yes, we have in a few cases, under special circumstances.

Q. What occasions do you refer to, Mr. Bowen?

A. The particular cases that I recall specifically were cases of our Union-bridge, Md., plant, with respect to the territory consisting of the State of Maryland and the District of Columbia and of our Lehigh Valley mills with respect to the State of New Jersey. These occasions happened during 1931 or 1932 during the time of the rather general price war in which we were engaged.

Q. In what particular territories did this occur?

A. Taking the case of Union-bridge, we found that in the State of Maryland and in the District of Columbia, although we had quoted prices figured on our Union-bridge mill that were extremely low and well below our cost, that there still continued to be a great number of cases in which we were unable to sell because our competitors were offering secret concessions. This condition was confined very largely to Maryland and the District of Columbia and was not as extreme in the territory to the north and south; that is, in the southern part of Pennsylvania and the northern part of Virginia, which was also included in our Union-

bridge territory, and because we saw no particular reason to extend the extremely low prices beyond the areas in which the most extreme competition existed, we quoted
26910 delivered prices in Maryland and the District of Columbia involving a further reduction in the already low prices there and the effect was to reflect a lower base figure at our Union-bridge plant for that portion of the territory than was reflected by our prices for the remainder of the territory.

In the case of New Jersey the situation was much the same in principle. There was a great amount of work coming up in the State of New Jersey and there seemed to be centered a tremendous amount of price cutting below the manufacturers' published prices.

At about that same time, also, we found foreign cement coming into New Jersey rather heavily and being sold at extremely low prices. There, too, because our prices were already so very low, we decided to quote new prices still lower which would be confined to the particular territory in which the competition was most extreme, and, again, the effect of those low prices confined to the State of New Jersey was to give us a new base figure at our mill for that territory.

Q. As to these secret prices: From what source did they come, if you know?

Trial Examiner Norwood: Did he say they were secret prices?

Mr. Brick: Yes, sir.

A. During that particular period—I mean, during part
26911 of the year 1931, and in the particular territory that I am now referring to—the secret prices seemed to be very general. As a matter of fact, in many cases the prices appeared to vary from day to day and job to job. We, of course, were selling only at our own published quotations and our effort was to arrive at a level and issue quotations at that level at which we could successfully market our product.

Q. As to time, you are speaking of the period of the price wars?

A. Yes, sir.

Q. Can you tell us whether or not you had any similar situation at your Cleveland grinding plant, Mr. Bowen?

A. Yes; a situation similar to that existed with extremely low prices made in the stock which reflected a lower

base figure at Cleveland than did the remainder of the territory.

Q. Did these various situations continue? What happened, Mr. Bowen?

A. In the case of Maryland and the District of Columbia the situation continued, as I recollect it, for about a year. In the case of the Lehigh Valley base figures applying to the State of New Jersey, it continued about six or seven months. During that time we found that price concessions below a manufacturer's public prices were gradually lessened in number; that there seemed to be a disposition on the part of manufacturers to abide by their published quotations.

As that situation developed it seemed to us that
26912 the market justified us in attempting a new quotation at a slightly higher level, the effect of which would be to eliminate the lower base figure.

Q. Mr. Bowen, you told us that your company was a one-price company. Has your company always been a one-price company?

A. No, we have not. In the early days we quoted a great many different kinds of prices, and that policy seemed to work well enough for a time, but by 1912 we realized that that sort of procedure was not giving us a very good reputation among the trade, and that if we hoped to build our business successively we had to adopt a different line of procedure.

26913 A. (Resumed) I have already attempted to say what I mean by one-price policy, is to make our quotations publicly and openly and sell only at the prices so quoted, until we change our prices by newly published quotations.

By Mr. Leisure:

Q. Now, you were just telling us, then, the circumstances as to whether or not your company had always been a one-price policy company, as you have described it.

A. Yes, I said that by 1912 we reached the decision that our former methods were not calculated to win confidence in a permanent trade, and that we had to do our business on some different basis.

Q. Did you have steady customers prior to 1912?

A. Not a great many, in the sense of any real loyalty and continued business. We had a great many customers who we could continue to sell as long as we gave them special prices.

Q. Well, now, I started using 1912, and you used it. I would like to follow it on down.

What happened then, in 1913, as to your pricing policy?

A. During the latter part of 1912, we decided to adopt, and did adopt, on the first of January, 1913, the practice to which I have already alluded, that is, of making our
26914 prices only by published quotations and by selling only at the prices so published.

Q. What has been your experience, then, Mr. Bowen, with respect to this new policy? How did it work out?

A. Well, at first, the results were a trifle discouraging. It took quite a little while for customers who had
26915 been accustomed to receiving all sorts of prices from us to realize that our policy was what we said it was, and that our quotation represented the only prices at which we were willing to sell, but, as time went on we found that the results were a great deal more encouraging.

Of course, we established the policy just at a time when we were building up our own sales organization to cover the territory, an organization consisting, in great part, of younger men whom we trained ourselves, and who discovered within a very short time that because this policy was winning the respect and prestige for the company even among customers who were not buying from us, that their enthusiasm grew, and they became convinced that it was the only way to sell.

Q. Can you tell me whether or not your company was the first company in the cement-manufacturing business that adopted this policy?

A. No, I can't say that we were or that we were not. Our observation in 1913 was there were one or two other companies, at least, that seemed to be working in that same direction. As to whether or not at that time they were adhering to a policy of selling only at their published quotations in every instance, I don't know. I do know from January 1, 1913, we did.

Q. You say that this policy resulted in your customers having confidence in your company. I would like
26916 for you to tell us just what your experience was as to how that worked out, as far as your viewpoint of the customers?

A. Well, "confidence" is a somewhat intangible thing. From my observation of the cement business the customers like to do business with people on whose policy they can

depend. They like to do business with people whose prices mean what they say, and where they can have assurance that some other customer isn't getting a better price than they are receiving.

There is this to be said, too, that a policy of that kind builds up a very great feeling of confidence and enthusiasm in a sales force which causes the salesman to put forth his best efforts and that, in turn, wins and holds the confidence of a customer. To me it is just simply a matter of trying to do business on a fair, open, and honest policy, and that does bring results.

Q. Now, subsequent to the initiation of this one-price policy in 1913, was there any difference with respect to the continuance of your customers with one company as compared to prior to that?

A. Indeed, there was. In the years immediately after 1913 we added to our lists a good many hundreds of customers a great many of whom we have sold continuously from that date to this.

Q. Has Lehigh, on occasions, deviated from its policy of openly treating all customers alike?

A. Yes, we have in a very few instances, in the last year or two.

Q. What were those?

A. During the year 1938 in one or two of our territories we found certain price competition from certain of our competitors which bore a very great resemblance to the conditions we had experienced in 1931 and 1932. The difference was merely one of degree, and one of the conditions existing in a more limited territory.

Our first instinct and intention was to endeavor to cope with that competition in exactly the same way as we had done in 1931 and 1932 but the recollection of the losses we had sustained during that period were still so vivid in our minds that, frankly, we flinched from doing it.

Q. Just tell us the territory that you were referring to. You say there were other cases—

A. The time I was referring to was 1938. The particular territories that I had in mind when making the statement were the States of Iowa and Mississippi.

Q. Now, referring to this subject matter that we have just been discussing; this establishment of bases at competitors' mills, have you ever done that, Mr. Bowen, as a

result of any agreement or understanding, or have you taken any such action by reason of an agreement or understanding with any of your competitors?

A. No, sir.

26919 Q. Mr. Bowen, I think you have told us that Lehigh advanced some of its prices around May, 1932; is that correct?

26920 A. Yes, that is correct.

Q. In what territories were such advances made, please?

A. As I recall it, we advanced our prices at that time in the territory around Iola, Kansas, plant, and also advanced them in the territory comprising the States of New Jersey, Maryland, and the District of Columbia, the conditions of which I have just described.

Q. Can you tell us what the extent of the advances were, Mr. Bowen?

A. As I recall it, the advance at Iola consisted of an increase of 25 cents per barrel in our Iola base figures, while the advances in the case of the Lehigh and Unionbridge bases consisted of the elimination of the lower of the two base figures which our quotations had previously reflected.

Q. Now, take Iola, Kansas; What were your reasons for the advance in that territory?

A. Early in 1932 the prices in the Iola territory were among the lowest of the very low prices which then existed all over the country. Some months earlier, in December of 1931, if I remember correctly, one of our competitors, the Missouri Portland Cement Company, had issued quotations advancing prices in that area, and we didn't follow that advance because we considered that there was still an amount of price concession in the market that we didn't think there was any chance that an advance would be generally followed, or would be observed if fol-

26921 lowed.

In the months following, however, the competitive situation in that area seemed to grow a great deal firmer. The number of price concessions were greatly reduced and it seemed to us in May, 1932, that if a moderate advance in prices were made, that the chances were a great deal more favorable that the advance would be followed and would be observed by the manufacturers in that territory.

As a matter of business judgment, and in our judgment, we thought the time was ripe to attempt to advance
26922 Q. You mentioned these in New Jersey and Maryland, Mr. Bowen. What were the reasons for those, please?

A. In these territories I have already described how we had quoted prices very much lower than even the low prices that obtained in the surrounding territories. After these final deductions we found that competitive conditions in those territories showed a gradual improvement, that there were fewer occasions in which manufacturers departed from their published quotations, the situation developing which led us to believe that the manufacturers who had been most active in that sort of competition were getting pretty tired of it, and were more likely to respect a slightly higher range of prices.

Of course, we were extremely anxious to get away from these variable prices in these territories as quickly as competition might permit, and, in our judgment, in the spring of 1932, conditions were such that we felt that we could advance those prices so that they might be in proportion to the prices in the neighboring territories.

Q. Well, Mr. Bowen, how was it that Lehigh did not advance its prices in other territories as well as in the
26923 New Jersey and Iola, Kansas, territories which you have been telling us about?

A. We had in mind, in May of 1932, that we certainly hoped to get higher prices all through the territory, as we could not have stayed in business permanently unless we did. Our thought in advancing the extremely low prices in May of 1932 was that if those advances did succeed, and if the prices so published were followed and generally observed, that would be an indication to us that we might later on attempt some further advances, and we had in mind doing so.

Q. Well, was there any change in demand between December, 1931, and May, 1932?

A. Yes, there was.

Q. What have you to say as to that, Mr. Bowen?

A. There was an increase in demand in that period. It was the normal seasonal increase that we find in the cement business, cement for dealer distribution and for use on jobs was moving in heavier volume, and it was that fact of comparatively heavier shipments that made us believe

that May of 1932 was an opportune time to venture the advance considering that the competitive conditions had also improved.

Q. Well, as you have explained it, what relation do you mean as to demand and price,—the relation to demand and price in the cement business?

26925 A. Well, all I know is certain facts when the demand for cement falls off very sharply secret concessions increase in number. They, in turn, lead to price reductions, or else to a further and more widespread practice of getting secret price concessions. In a comparatively short time the industry is in the middle of a price war, and prices are at ruinously low levels. Then, ultimately, the pendulum swings backward a little bit, and everybody in the business is glad to accept a range of prices that is somewhat higher than the extremely low levels to which the price war has brought the industry. I have not found that those extremely low price levels, or the price, either increased or decreased the demand.

By Mr. Leisure:

Q. Well, did the Lehigh Company, after May, 1932, advance prices in any other areas?

A. Yes, we made further advances in our prices in July of 1932.

Q. What was your reason for that?

A. I have already explained the advances we made in the Lehigh Valley territory in July of 1932. In the Middle West about the middle of July we found quotations in the field issued by the Marquette Company. Other prices around the LaSalle section had been the lowest in

26926 many parts of the country.

When we found the Marquette quotation in the field we felt that conditions in the market were such that an advance might be generally followed, and might succeed. We decided to meet those quotations, and at the same time make changes in our prices out of Mitchell, and Mason City, so as to bring the prices in those territories in somewhat the same relation, proportionately, as the prices in the territory around our Oglesby plant.

Q. Did Lehigh advance its prices in the East, around that time?

A. Yes, we did, in the Lehigh Valley, under the circumstances that I have explained when we explained how we discontinued trucking.

Q. Did the Lehigh Company advance its prices in any areas in December of 1932?

A. Yes, there were some advances in December of 1932. As I recall it, there was an advance in prices made by the Alpha Company around its Ironton plant, and there were a few advances to the westward following that.

26927

Washington, D. C.,
November 14, 1939.

26928 JOHN C. BOWEN thereupon resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Leisure.

Q. Mr. Bowen, this morning will you address your attention for a moment to the year 1936, and can you tell us whether or not your company advanced its prices in Cleveland in the early part of that year?

A. Yes, we did.

Q. And can you tell us the circumstances that caused you to advance your price?

A. During the early part of 1935 we had reduced our prices in and around Cleveland by 15 cents per barrel. At that time we had found a good many sales made by
26929 competitors at less than their published prices, and our reduction was an effort to reach a level at which we could sell.

As time went on, the situation seemed to become somewhat more stable; there seemed to be pretty general disposition on the part of competitors to observe our published prices at these lower levels. In our judgment, the prices were too low. From any profit-making standpoint we were anxious to advance them to at least the former level as soon as the situation seemed ripe to do so.

By the end of 1935 we decided that the conditions were such to warrant an attempt at an increase, and shortly before the Christmas holidays we decided we would make an advance immediately after the first of the year.

Q. How was this advance announced, Mr. Bowen?

A. It was announced by written quotations to our trade which were mailed on January 2, 1936, dated January 3 to conform to the date the quotations would reach the trade and the new prices to become effective on January 8.

Q. Was there any announcement other than this public announcement?

A. In that particular case we did something that we do not ordinarily do, that is, we gave advance notice of our intention to advance the prices to our Buffalo and Pittsburgh offices, which were the two sales offices that handled the territories which would be affected by the increase.

26930 The reason we did this was because during the Christmas holidays we were afraid that either our district managers or members of our sales force would be absent from the territories during the holidays, and we wanted to have them on hand when the change took place so that they might handle the queries that always come in at the time of the price increase.

As a result of this advance information the information about the contemplated advance leaked out very badly. By December 31 it seemed as though every customer of the Cleveland market knew about the proposed increase and therefore the information instead of coming to the trade through our published quotations which was the way we wanted it to come had by that time become public property.

Trial Examiner Norwood: By "leaked out," it leaked out from your—

The Witness: From our sales organization.

Trial Examiner Norwood: Yes.

The Witness: Through the fact they had this information some days before the change was made.

By Mr. Leisure:

Q. We have been discussing this morning, Mr. Bowen, the Cleveland 1936 price advances, and when court adjourned on Friday we had been discussing various other advances. As to all of those and as to any price

26931 changes which your company has made did you have any understanding or agreement with any of your competitors with respect to the making of any of these changes?

A. No, sir; we did not.

Q. Mr. Bowen, I show you Respondents' Exhibits 1131, 1132, and 1133, and ask you if you will identify them, please (handing documents to witness)?

A. No. 1131 is an original letter from our Birmingham sales office to our Allentown sales office reporting on new

prices discovered around Port St. Joe, Fla., made by the Alpha Cement Company.

No. 1132 is a carbon copy of a letter that I wrote
26932 to our Birmingham office authorizing them to meet the Alpha quotations.

No. 1133 is a copy of a report from one of our salesmen in the State of Pennsylvania to our Birmingham office reporting on new Penn-Dixie prices which he had discovered in the vicinity of Brunswick.

26934 (RESP. EXS. 1131, 1132, and 1133 were offered and received in evidence.)

26935 The witness identified Resp. Exs. 1134 to 1298 generally as letters and reports from Lehigh's sales organization, either salesmen or branch offices, to
26936 Lehigh's Allentown office "telling us" about competitive prices of quotations, and where it consists of price changes the original source material that Lehigh had pertaining to those changes and the information on which its action was based; Resp. Exs. 1137 and 1138 as correspondence with Lehigh's Birmingham office pertaining to freight rates to be used in connection with price changes. All of these (Resp. Exs. 1134 to 1298) were either received or sent by Lehigh's Allentown office and passed over the witness' desk and under his direction in the regular course of business.

Mr. Leisure: That being so, I offer in evidence Exhibits 1134 to 1298. (Handing papers referred to to Mr. Wooden.)

I imagine Mr. Wooden will want to look at those in some detail. If we can save some time by having him look at them at the noon recess, or some other time, I will just let the offer stand and we might save court time.

Trial Examiner Norwood: Yes. He may retain them until he can look over them.

26937 Mr. Wooden: I would like to ask a question or two on voir dire.

Trial Examiner Norwood: Yes.

Examination on Voir Dire by Mr. Wooden.

Q. Do these papers include some changes in price at destination that do not reflect changes in base point?

Mr. Leisure: Do you want to look at them, Mr. Bowen?

A. I would have to look at them, I fear.

By Mr. Wooden:

Q. Well, does your reference to Exhibits 1137 and 1138, that you made a few moments ago, does that have a bearing on that question?

A. Yes. All of 1137 and 1138 were, the fact that our Birmingham office found quotations in the State of Georgia which did not reflect any base figure that we had found in use previously, as near as they could determine, reflect the use by the Penn-Dixie Company of Brunswick, Ga., as basing point. That being so, they requested us to furnish them freight rate information, freight rates out of Brunswick, so that they might calculate the situation fully.

Q. Well, can you state whether or not some of these papers involve changes in delivered prices without changes in base prices?

Mr. Leisure: Since that question requires, of
2938 course, the witness looking at the papers, wouldn't it be time saving if Mr. Wooden picked out the papers that he has in mind later, and then ask the witness about them?

Mr. Wooden: He is about half way through them now.

(The witness examines papers.)

The Witness: Now, may I have that question?

Trial Examiner Norwood: Read the question.

(Question read.)

A. I have looked the papers over hurriedly and find that there are quite a number of changes in destination prices which do not indicate any apparent change in the base figures previously reflected by the quotations.

By Mr. Wooden:

Q. What would they then reflect?

A. Merely the changes in the destination prices.

Q. As a result of what?

A. As a result of changes made by some competitor or other.

Q. Changes in freight rate?

A. Some of them by reason of changes in freight rates, but others merely changes.

Q. Now, are there some among these papers where you cannot tell on the face of the papers whether they involved a change in base price or a change in the delivered price only?

A. I think that if I looked the files over carefully I

could tell from the quotation or company corre-
26939 spondence the nature of the change in every case.

Q. By some calculations, you mean, or study?

A. Principally by a reference to the accompanying correspondence which reflects an analysis made either by the people who reported to me or by me before I answered them.

Q. So that somebody could take the papers and without saying outside of the papers could determine from the papers themselves whether they reflected a change—

A. I believe so. Of course, there are included in there quite a good many reports about prices which do not reflect any action taken by us.

Q. Just merely reports.

A. Yes; some of the reports.

Trial Examiner Norwood: Go ahead.

Mr. Wooden: May we retain these?

Trial Examiner Norwood: Yes, Counsel may retain those and state his objections later.

Respondents' Exhibits 1134 to 1298, inclusive, for identification, are retained by Counsel for the Commission.

Go ahead.

Direct Examination (Continued) by Mr. Leisure.

Q. Mr. Bowen, I would like to address your attention to imported cement, for a moment.

26940 At what point, if at all, has your company felt the impact of foreign cement competition?

A. Beginning in about 1925 we began to feel the effect of imported cement quite severely in New York and Boston. Within a few years after that we began feeling it with about equal severity throughout the South Atlantic ports and at practically all ports on the Gulf of Mexico.

Q. And did that cover the entire Atlantic Seaboard?

A. Yes, the entire Atlantic Seaboard and Gulf of Mexico Seaboard.

26942 Q. Mr. Bowen, as an executive of your company is it or is it not one of your duties to keep informed as to the importation of foreign cement?

A. Yes, it is.

Q. And can you tell us whether or not it is or is not a part of your duties, having ascertained this information, to base your policy on the knowledge thus obtained?

A. Yes, surely. We have taken all the information of that sort that we have been able to get into consideration in arriving at your decisions on policy.

26944 Q. Mr. Bowen, let me ask you a question further as to your experience in this field of imported cement. You have already told us, I believe, that it is part of your regular duties to keep informed as to the importation of cement.

A. That is correct.

Q. In order that you may formulate your policies?

A. Yes.

Q. Have you in the past, and particularly since 1925, found it necessary to base your policy or take action upon that knowledge so obtained by you?

A. Yes, we have.

Q. And in basing your knowledge, and in basing your policy upon that knowledge, what knowledge did you
26945 base it upon with respect to whether or not cement had increased or decreased since 1925, please,—imported cement had increased or decreased?

A. We based the various actions that we took with regard to foreign competition upon the information we had gathered.

Q. Which was what, Mr. Bowen?

A. Information as to the extent of foreign importations and prices at which those—

Q. And that information was or was not whether it had increased or decreased?

A. Our information was that beginning in 1925 there was a steady increase in the amount of the imports, that that increase was interrupted, the volume considerably reduced, during the depth of the depression, and that beginning about three or four years ago there began again a steady increase in the importations.

26946 Now, Mr. Bowen, in formulating your own sales policies, has it been necessary for you to take into consideration also, has it or has it not been necessary for you to take into consideration the prices at which foreign cement is sold?

A. Yes, sir; it has been necessary to do so.

Q. And what has been your information on which you have acted with respect to whether the foreign cement prices were lower or higher than domestic products?

A. They have at all times during that period been

lower than prices that we have quoted on our domestic product.

Q. And has your company met those prices, Mr. Bowen?

A. No, we have not.

Q. Why not?

A. We have from time to time attempted to meet them, but in every instance the price of the foreign cement has been further reduced.

26949 Q. Mr. Bowen, in setting the prices of your company from its various mills, is it or is it not necessary for you, as an executive, to gather information concerning the price of imported foreign cement that is being sold into this country?

26950 A. Yes, I consider that very important information in the territories where foreign competition exists.

Q. And having gathered that information, sir, did you come to certain conclusions, or did you not, with respect to whether you would meet the prices of foreign cement which you found in this country?

A. Yes, sir.

26953 Q. Mr. Bowen, what methods have Lehigh adopted to meet foreign competition, if any?

A. Since 1925 we have, at times, adopted several different methods. They were all based on the principle of attempting to meet the foreign competition at the point at which the competition originated; that is, the ports at which the imported cement entered the United States and from which it moved into the interior.

We have established especially low prices at some of those points. At times at some of them we have offered our customers special refunds on cement shipped to those destinations to attempt to put those customers in a position to meet the imported competition, and then we have, at times, figured our prices at the surrounding destinations such that we hoped that they would meet the foreign competition.

Q. Well, take prior to 1929, Mr. Bowen; How early had ports of entry for imported cement been used by your company as the basis for the figuring of prices?

A. Some of the ports on the South Atlantic had from time to time been used for a great many years for
26954 figuring prices into surrounding areas.

Q. Mr. Bowen, you had just been telling us that

for many years certain southeastern ports, including Wilmington, Charleston, Savannah, Brunswick, and others,—do you recall—

A. Yes.

Q. —from time to time were basing points?

A. Yes, sir.

Q. I would like to ask you whether or not the Lehigh Company established those points as bases, or was that done by some competitor?

A. I can't answer that question. They existed as basing points well before 1910. They were the customary ports through which cement was supplied from the Lehigh Valley mills to the southeastern territory. We and other manufacturers shipped cement to those ports by water from Jersey City, and re-shipped it from there into the interior.

In other words, they were ports through which imported cement and, in the early days, of the domestic cement industry, domestic cement reached that territory.

Q. Well, how early did you use Boston as a port base?

26955 A. The first instance that I recall was in the spring of 1929. At that time we figured the prices on Boston as using it as a basing point in order to meet the competition of foreign cement which was at that time moving quite strongly into the interior territory around Boston.

Q. Was that base put in by the Lehigh Company, Mr. Bowen?

A. It was.

Q. When you adopted a base at Boston, as you say in 1929, can you tell us how you determined the prices in the surrounding areas?

A. The imported cement was moving into that surrounding area by truck. There were no commodity rates from Boston to inland points; commodity rail rates,—so we made a survey of the trucking costs from Boston and computed our prices for the inland points by adding to our Boston price the estimated cost of trucking to the destination, as the survey had developed it.

Q. Did these prices, do you know, bring a higher or lower return at your mill?

A. It brought us a considerably lower return than the prices theretofore made.

Q. You say lower. Were the lower prices you established met by your competitors?

A. They were, to whatever extent our competitors remained in the market. Our observation indicated
26956 that some of our competitors did not meet them and withdrew from the market.

Q. You say they withdrew. How long did your company sell cement in Boston, in the Boston area, by this method?

A. Oh, from time to time, with various modifications of the method, until July, 1938.

Q. I would like to call your attention to a Commission's exhibit bearing number 1171. It is dated January 6, 1933. It appears to be from Mr. Bowen to Messrs. Burke, Platt & McKenna. Will you tell us who these gentlemen are, please?

A. Mr. Burke is district manager in charge of our sales in the New York Metropolitan district.

Mr. Platt is manager of sales in what we call the New York suburban district.

Mr. McKenna was, at that time, district manager in charge of our sales in the northern part of New Jersey.

Q. Can you tell us, Mr. Bowen, whether at or about this time the Lehigh Company made any change in policy regarding imported cement?

A. Yes, we found that some of our competitors had adopted a policy of declining to sell their product to dealers who handled the imported cement, and after the date of this communication we adopted a like policy.

Q. Was this the first time your company adopted this policy?

A. Yes, it was.

Q. When did you first become acquainted with
26957 this method of combatting imported cement, Mr. Bowen?

A. Several years earlier we found one of our competitors, the Lone Star Company, observing a policy similar to that around New Orleans.

Q. Did you compete with them in New Orleans?

A. Yes, we did.

Q. And then did you or did you not adopt a similar policy at that time?

A. No, we did not. We did not at that time conclude it would be advantageous to our company to adopt it, so did not.

Q. Can you tell us to what territories this Exhibit 1171 applies?

A. It applies to territory consisting of Greater New York and the surrounding territory which was reached by imported cement from New York.

Q. And then did you or did you not later apply this policy to other areas?

A. Yes, five or six months later we applied the same policy in Boston and surrounding territory.

Q. Now, you say a later time. What was your reason for the lapse of time, applying the policy in the New York and Boston areas?

A. When we applied the policy at New York it was new, untried policy as far as our company was concerned.

We decided we would try it in New York and see
26958 what results it produced for us. By the time we had five or six months' experience with it is seemed to us that the policy was working out to our advantage, and that it was desirable for us to apply the same policy in the Boston territory.

Q. Had other competitors adopted the policy in Boston before you did, do you know, Mr. Bowen?

A. Yes, we were informed that they had.

Q. Well, can you tell us under what circumstances you learned what your competitors were doing with respect to refusing sales to dealers who purchased imported cement?

A. Our first knowledge of the use of such a policy by our competitors in the New York territory came to us from dealers in that territory. At the time all this happened the dealers were rather sharply divided between the majority, both from the standpoint of number and volume, who were not handling imported cement, were opposed to it, and the minority of dealers who handled the imported cement. When our competitors informed the dealers of their policy, declining to sell the dealers who handled foreign cement, that policy was very acceptable to the dealers who were not handling the imported cement. They considered those policies very favorable to them and told us about them.

It seemed to us that our competitors were about to
26959 gain a substantial advantage over us through the adoption of the policy, and that it was very good business for us to follow their action and improve our standing with the dealers who controlled the greater volume of cement in the market.

Trial Examiner Norwood: Well, did all the domestic sellers finally adopt that policy there?

The Witness: No.

By Mr. Leisure:

Q. I want to call your attention to another Commission exhibit, Mr. Bowen, No. 1160-A. This is a letter, Mr. Bowen, of Mr. Spring of C. H. Spring, Inc., Newton Lower Falls, Mass., to Jenney & Lux, Inc., of Boston, dated February 1, 1934. Was Spring at that time one of your dealers?

A. No, he was not.

Q. Now, referring to Commission's Exhibit 1160-B, was the Crystal Sand Company a dealer of your company?

A. No, they were not.

Q. Commission's Exhibit 1160-C. It is a communication apparently from the Liberty Coal & Cement Company to Jenney & Lux, dated February 2, 1934. This exhibit states that they were advised by a group of companies, among them the Lehigh Company, that they would not take orders for their cement unless "we would sign an agreement to the effect that we would not handle any imported cement."

Was the Liberty Company a Lehigh dealer at that time?

(Witness examines document.)

A. Yes, they had been.

26960 Q. Did you ask them for any agreement that they would not handle any more imported cement?

A. In effect, we did. I don't know what our Boston office may have told them, but I do know that this is a dealer who was buying imported cement, and who, under our policy, we declined to sell. Later on he informed us that he was no longer buying imported cement, after which we were glad to sell him, but then, within a very short time thereafter, we again found him buying imported cement, and again refused to sell them.

Mr. Wooden: Who was that dealer?

(The witness hands document to Mr. Wooden.)

By Mr. Leisure:

Q. Referring to Commission's Exhibit 1160-D and E, the Cambridge Builders' Supply Company and the Watertown Company—let me state it another way:

There are two exhibits here. One is 1160-D, which is a letter from the Cambridge Builders' Supply Company to Jenney & Lux, and 1160-E is apparently from the Water-

town Builders' Supply Company to Jenney & Lux. Were they dealers of the Lehigh Company (handing document to the witness)?

A. No, neither of them were customers of the Lehigh Company at that time.

Trial Examiner Norwood: Let me see that, please.

(The witness hands document to the Trial Examiner.)

By Mr. Leisure:

26961 Q. What, if any, steps did the Lehigh Company take to find out whether a dealer was handling imported cement, Mr. Bowen?

A. We told our Boston office that it was their responsibility to ascertain what dealers were handling imported cement in order that our policy might be made effective, just as we stated it. It was up to Boston to get that information both on domestic and foreign cements, just as our salesmen in our territory ascertained what brands of cement the dealer is handling, and reports the information to us.

Q. How is this information necessary? Was it necessary to keep you informed of any conditions?

A. In order to keep us informed as to the dealers who were buying from importers, foreign cement, because our policy that we would not sell to such dealers, and in order to carry out that policy as we had adopted it, the information as to those dealers who were handling the imported material was very necessary.

Q. Did that information, or did it not, include information with respect to the brands of cement, domestic cement?

A. Both domestic and imported.

Q. Did the instructions which you have just described include or even contemplate, shall we say, salesmen following dealers' trucks?

A. Well, the instructions to Boston gave them con-
siderable latitude as to the collection of the in-
26962 formation. I should explain that situation in Boston was quite different from the situation in the New York market.

In the New York market at that time the dealers who were buying imported cement were buying it in large quantities. Cement was unloaded direct from the steamers to lighters and delivered directly to the dealers' warehouses.

In Boston, however, the imported cement at that time was stored all at one location, which was a warehouse at the army base at Boston, but in Boston the dealers did not ordinarily stock the imported cement in their warehouses but sent the trucks to the army base and delivered from the importers' stocks directly to the point of use. It was necessary, therefore, in Boston, in order to get the information to observe the deliveries of cement from the place of storage just as in other places the dealers' warehouse is the point from which the deliveries are made.

Q. What was your experience, Mr. Bowen, with that? Did you or did you not receive any letters from any dealers protesting against your policy?

A. No, I don't recall that we received any letter from dealers protesting against our policy. I have had many talks with dealers both in Boston and New York who were very much in favor of the policy.

Q. What dealers, Br. Bowen, did or did not favor or disfavor the policy?

26963 A. At that time the dealers who were in favor of the policy were, in general, the dealers who didn't deliver imported cement and didn't want to handle it. Generally speaking, they included the larger and more important dealers in the market. The dealers who didn't like the policy were, of course, the dealers who bought the imported cement.

By and large, they were the less important dealers, consisting very largely of dealers whose principal business was serving speculative operations.

Q. What do you mean by speculative operations?

A. I use the term as referring principally to the construction of residences or small apartment buildings of low cost construction and built primarily for quick re-sale. That is what we call speculative work in the construction industry.

Q. Was the situation the same in the New York market as it was in the Boston market, Mr. Bowen?

A. No, in the New York market, as I already explained, the dealers who handled imported cement carried it, for the most part, in their own warehouses. Our salesmen, in their regular rounds of the dealer trade, could secure the information about any imported cement that a dealer was handling in just the same way as they secured the information as to the domestic brands he was handling, simply by observing what he had in stock. That was the essential dif-

ference between New York and Boston because in Boston it was necessary for the salesman to make an addi-
26964 tional check for the imported cement over and above his customary check of domestic brands, which he also made by observation at dealers' warehouses.

Q. Now, Mr. Bowen, if foreign cement was cheaper than domestic cement, as you have told us that it was, how were you able to sell any cement? In other words, how did it happen dealers did not use foreign cement exclusively?

A. We found that a good many dealers not having foreign cement because in a great many cases they found that the imported cement was not acceptable to their trade—in those days there was considerable feeling among consumers that the foreign material was of questionable quality, it was not suitable for some kinds of work.

26965 Well, I think the principal reason why a great many dealers were loathe to handle foreign material was because they had no really dependable source of supply. Those dealers were dealers who took a great many contracts for future delivery, commitments for specific work, and they found that if they attempted to make those commitments on imported cement, and at the price applying to imported cement, they did not have a sufficient assurance that the material would be available when needed to enable them to make their commitments good.

By Mr. Leisure:

Q. You mean merely the material would or would not be available, or would or would not be available at the price which they had expected?

A. Principally, that they could not depend upon having the material available when necessary for them in turn to make their deliveries.

Q. Do you still have a policy, Mr. Bowen, of refusing to sell to dealers of imported cement?

A. No, we do not.

Q. When was that policy discontinued, if you know?

A. My recollection is that we discontinued it, both the New York and Boston areas, in December of 1935.

Q. Do you know, Mr. Bowen,—can you tell us now whether or not your company was the first to withdraw that policy?

A. I can't say because I do not know that any
26966 competitor issued a written statement of his withdrawal, but from my observation at the time I found

that a good many manufacturers were not at that time following that sort of a policy.

Q. Can you tell us, Mr. Bowen, in a word how your experience worked out with that policy—I mean, was the policy successful in competing with imported cement?

A. In the early stages I would say yes, it was quite successful and generally popular among the majority of our trade. However, as more dealers felt themselves under the necessity of taking on the sale of imported cement, we found the policy working more and more to our disadvantage, and when it finally reached a point where the policy did not contain enough advantage to us in the way of business, we relinquished it.

Q. I have another Commission exhibit here I would like to call your attention to a moment. It is numbered Commission's Exhibit 210-C to I. Did you receive a copy of it (handing exhibit to witness)?

A. Yes, I recall receiving that.

Q. Now, you have told us about your policy and methods of meeting foreign cement. What, if any other methods, did you use in New York to combat imported cement—that is, other than those methods to which you have already referred?

A. In the summer of 1935 we found that one of our competitors had established stocks of cement at
26967 Brooklyn and was selling that cement under conditions that approached as nearly as possible those which the imported cement was being sold, and at reduced prices. We felt ourselves under the necessity of meeting that situation to hold our trade, and did so by establishing similar stocks and selling in like manner.

In December, 1935, the manufacturer who had originated these stocks discontinued them and ceased selling in that fashion, and we did so also.

Q. You did so, also?

A. Yes.

Q. Well, after December, 1935, did you have any particular program in dealing with foreign cement?

A. During the period immediately after December, '35, we had no particular program, but all through 1936 we felt the effects of the foreign competition to an increasing extent. Our business was quite severely affected. We were considerably at a loss as to our next move, although we were extremely reluctant to give up our effort to deal

with the foreign cement. We went along through most of 1936 under those conditions; by the end of the year reached a conclusion that we must make at least one more effort to meet that competitive situation, so toward the end of 1936 we again made extremely low prices in New York and Boston, and used both New York and Boston as basing points from which to figure prices in the surrounding territory.

26968 Q. Well, how did you determine the base figure that was put in at New York and Boston?

A. Why, going as low as we felt that we could possibly go to and still stay in business, as nearly as we could see it. They were extremely low figures.

Q. Well, how closely did you approach the foreign cement?

A. They did at no time approach the prices of foreign cement. They did come within about 20 cents a barrel of reaching the imported prices.

Q. And can you tell us whether or not the average net on your Boston and New York business was lower than the cost?

A. It was.

26969 Q. How did you announce these prices, Mr. Bowen?

A. We announced them by our customary written quotations to the trade which, as I recall it, were dated early in December, 1936.

Q. And did you distribute your list of prices to competitors?

A. No. We sent our quotations to the trade. The quotations were effective immediately because they involved reductions in prices.

After the quotations were in the field if we were asked by any dealer or competitor for a list of prices we had quoted, we gave them to them.

Q. What I mean, what I am really getting at is, did you furnish them to any competitor prior to the effective date of the price?

A. No, sir.

Q. Now, these prices that you established have, from time to time, been referred to in the record in this case, Mr. Bowen, as arbitrary prices or depressed prices and special prices. Suppose you tell me in your own words what the prices are that you have been referring to?

A. Well, I would consider that all such terms are
26970 misnomers. We looked upon the prices quoted around New York and Boston as being quoted on those two points as basing points; points at which the competition on imported cement originated.

From our viewpoint they were just as much base points as any other points of competition at which we found quantities of competitive cement originating, and around which we found prices reflecting any sort of a constant figure at the point of origin.

Trial Examiner Norwood: Well, did these prices do that?

The Witness: Yes. We found, generally, that the imported cement, although there was a great fluctuation between, say, Belgian and Danish cements, that there was a reasonable amount of constancy shown.

By Mr. Leisure:

Q. What was the date of your announcement of these new prices?

A. My recollection is December 8, 1936.

Q. And when were they made effective?

A. Effective immediately because they were, in each case, reductions.

Q. Can you tell us how long these new prices, figured on Boston and New York, stayed in effect, Mr. Bowen?

A. We kept them in effect until July of 1938, either July 8 or July 9, as I recollect.

26971 Q. And then was there a change?

A. Yes.

Q. What happened?

A. At that time we found that the quotation in the field, by the Allentown Portland Cement Company; my recollection is that we found them in the field on the morning of July 5. These quotations at the destinations around New York and Boston were not figured as our prices were, but were asked prices and appeared to reflect the use of a base figure at the Allentown Company's Lehigh Valley mill, which was 10 cents lower than the prevailing base figure as we had previously found at Northampton.

At the same time of this reduction in the Allentown Company's base figure, reduced prices in a very wide territory inland from the Atlantic Seaboard, and, at the same time, the Allentown Company issued quotations appar-

cutly reflecting the adoption of a base figure at its Valley Forge mill. This latter action had the effect of still reducing prices in the very wide and very large consuming territory around Philadelphia.

Q. What was your experience as to whether or not your competitors met these quotations?

A. Within a day or two after the quotations were issued we found that a number of competitors had met not only the reduction in prices, which they met very quickly, but also were meeting the advanced prices in the New York and Boston areas.

26972 Q. I think you have already told us that you sent out your new announcement on July 8 or 9; is that correct?

A. Yes, sir.

Q. Having put these prices in New York and Boston, did your company follow the increase?

A. We did, ultimately. This action by the Allentown Company put us quite squarely on the horns of a dilemma. The reductions they had made were quite sharp; covered a rather widespread and heavy-consuming territory.

We had to meet those reductions, and did meet them from the minute we found them in the field. The question that remained for us to decide was whether we would follow the advances they had made, and it was a question that gave us a good deal of concern because we were extremely loathe to give up our efforts to meet the foreign competition.

We discussed the matter very seriously within our organization, reasoning that the reductions in prices had placed quite a load on us. In the meantime our costs had advanced pretty sharply; labor rates were up. Our effort to deal with the foreign situation had been quite ineffective. We had neither succeeded in meeting their prices nor had we succeeded in reducing the amount of importations. They were continuing to increase,—the importations. After consideration of all these facts we finally reached the conclusion that the thing for us to do was to

26973 follow the increased prices, and after three or four days of discussion we did so, doing it with a considerable amount of reluctance.

Q. Now, as to this, Mr. Bowen, and referring to this matter of imported cement: I mean the establishment of port bases and the refusal to sell importers of foreign

cement and the elimination of port bases. Did you have at any time any understanding or agreement with your competitors with respect to the steps which you took respecting any or all of these matters?

A. No, sir.

Q. I would like to take up the subject of statistical service for a moment,—of the Cement Institute, Mr. Bowen:

Does the Lehigh Company subscribe to the statistical service furnished by The Cement Institute?

A. We are members of The Cement Institute and receive the statistical service as a result of that membership.

Q. Did the Cement Manufacturers' Protective Association furnish statistical information to its members?

A. Yes, it did.

Q. How long has the Lehigh Company been receiving the Institute service?

A. During the period of our membership in the Institute and through until the present time.

Q. Was there any difference between this information you received from the Cement Manufacturers' Pro-
26974 tective Association and that which you received from The Cement Institute?

A. To the best of my recollection, they were just about the same.

Q. What were the approximate dates of Lehigh membership in The Cement Institute, Mr. Bowen?

A. From the time the Institute was first formed, early in 1929, until, as I recall it, March, 1931, when we resigned. Then we rejoined in the spring of 1933, and our membership has continued since.

Q. I have a Respondent's exhibit, Exhibit 144. I would like to ask you whether or not during the period of your original membership in The Cement Institute you furnished data on this form to the Institute?

(A document was handed to the witness by Counsel.)

A. Yes, this seems to be the form on which we reported to the Institute.

Q. What data did you furnish, Mr. Bowen?

A. The data on this form included figures on our production of cement and clinker, the amount of cement shipped, and stocks on hand.

Q. There is another Respondents' exhibit here, Exhibit 146. Can you tell us whether your company received

information disseminated by The Cement Institute on this form?

A. Yes. This seems to be the form on which, during that period, we received from the Institute figures
26975 on production of cement and clinker, net shipments and stocks on hand.

Q. Now, as to Respondents' Exhibit No. 145, during the period of your original membership in The Cement Institute, did you or did you not furnish data on this form to the Institute?

A. Yes; as I recall it, from 1929 to 1931 we did.

Q. And as to Respondents' Exhibit 147, let me ask you whether you received information from the Institute on this form?

A. Yes, I think we did.

Q. What information did you receive on that form?

A. The information included data as to the number of cloth sacks returned by customers, and the number of cloth sacks credited to customers.

Q. Well, now, as to those forms, the number of the forms appear to be 9, 10, 11, and 12, the exhibit numbers 144, 146, 145, and 147; when were they used by The Cement Institute—during what period?

26976 To the best of my recollection, these forms were used by the Institute during the time of our first membership, which was from 1929 to the spring of 1931.

26977 Q. Was the information concerning cloth sack returns of any benefit to your company, Mr. Bowen?

A. No.

Q. Did you ever use it?

A. No, I never did.

Q. Today, do you submit or receive any information regarding the return of cloth sacks from The Cement Institute?

A. No. When we rejoined the Institute in 1933 we found that it was no longer issuing such a statement.

Q. Has your company ever received that information from any other source?

A. No, we have not.

Q. What use, if any, did the Lehigh Company make of the information which it received from the Institute with respect to production, stocks on hand, shipments, Mr. Bowen?

A. We took it into consideration as one of the sources of information available to us from which we could plan our future operations.

26983 Q. Mr. Bowen, I hold in my hand Respondents' Exhibit 148. I would like to ask you whether you are familiar with it, and, if so, in what connection?

A. This Exhibit 148 appears to be the form we 26984 use at the present time to report to The Cement Institute statistics on production and shipments.

By Mr. Leisure:

Q. And since what period of time, Mr. Bowen?

A. Since our present membership in the Institute began.

Q. I would like also to call your attention to Respondents' Exhibit 149-A to G, and ask you if you are familiar with it, and, if so, in what connection?

A. Exhibit 149 is the form in which we receive from The Cement Institute data on production and shipments.

Q. And is your answer the same as the preceding one as to length of time they had used it,—since 1933?

A. Yes, it is.

Q. Does your company, Mr. Bowen, submit any information to the Institute other than that supplied on forms 9 and 10, being Respondents' Exhibits 148 and 149?

26985 A. No, not to the best of my knowledge.

Q. Does the Lehigh Company furnish the statistics to the United States Bureau of Mines?

A. Yes, we do.

Q. In what respect do the statistics furnished to the United States Bureau of Mines differ, if at all, from 26986 those which your company submits to The Cement Institute?

A. To the best of my kowledge and belief, they are identical.

Q. And does the Bureau of Mines, or does it not, compile in any form the information which it receives from the different manufacturers in the industry?

A. Yes, it compiles the data and issues monthly reports to show the production, shipment, and stocks by the 12 districts used by the Bureau of Mines in such calculations?

Q. And for what period of time, to your kowledge, has the Bureau of Mines been publishing this information?

A. For a great many years; as far back as I can recall.

Q. That goes back 25 or 30 years?

A. Yes.

Q. Has it been substantially the same, or different, over that period of time?

A. It has been much the same throughout.

Q. When does your company make its reports concerning this information to the Bureau of Mines, Mr. Bowen?

A. We send the information to the Bureau of Mines within two or three days after the close of each month, as soon as we can collect the figures from all our mills.

Q. And then when do you receive a compilation of the Bureau of Mines' material covering all of the Bureau of Mines' districts?

26987 A. Oh, at the present time, it is coming in about 35 or 45 days from the time we send the data in.

Q. Did the Lehigh Company ever subscribe to the Mallory service?

A. Yes, we did for a few months in 1927, and then beginning about January 1, 1929, and continuing until The Cement Institute began publishing similar services.

Q. Was this service by Mr. Mallory, do you know, affiliated with any other organizations or was it an independent service?

A. I think it was a personal venture of his own.

Q. What was the nature of the Mallory service?

A. It consisted of some statistical reports and some data based on the F. W. Dodge Company's building construction figures, which was an attempt to predict the volume of construction and the volume of cement consumption.

Q. Now, you told us you had that service for a short period of time. Can you tell us under what circumstances you subscribed to the service?

A. We were never particularly enthusiastic about Mr. Mallory's service. He solicited us constantly to subscribe to it. He was a man who had been in the cement industry for a good many years. We were personally friendly to him. I would say that we finally subscribed to the service as much for sentimental reasons as any other.

Q. And what, if any, use did your company
26988 make of the information?

A. Very little. We considered it of very scant value. It merely, in a large part, was an interpretation of the Bureau of Mines' figures, or of the F. W. Dodge Company's statistics. We took it as one of the bits of

information that was available to us in planning our course and deciding our actions.

Q. Did you furnish any information to Mr. Mallory?

A. Yes; for a part of the time, as I recall it, we furnished him reports of production and shipments for some of the districts in which we operated, but only some.

Q. What was the cost of your service, Mr. Brown, to your company?

A. It ran somewhere from two hundred to two hundred and fifty dollars a year. At least that is what we paid.

Q. I notice in the record the name of F. W. Dodge Corporation. What is the F. W. Dodge Corporation, Mr. Bowen?

26989 A. It is an organization on almost a national scale which collects and disseminates information pertaining to all sorts of construction projects.

By Mr. Leisure:

Q. Do you subscribe to that service?

A. We do. The organization is a very large and very effective one. It collects information by means of a large field force which calls on engineers, architects, and public officials.

This information is tabulated in individual construction reports which the Dodge Company sells to contractors, material men of all kinds; any one who is interested in the construction business.

Q. What types of materials does it cover?

A. It covers all sorts of material in every kind of construction work.

In addition to the individual construction reports, the Dodge Company, which operates, as I recall it, in 37 States east of the Rocky Mountains, tabulates the statistical data from these construction reports and publishes various kinds of statistical analyses which, as to the past, gives data on the amount of construction, divided, public and private, and into the various groups of construc-

26990 tion, and, in addition, from time to time, attempts to project those figures in the form of estimates as to what the future volume of construction is likely to be.

Q. What is the cost of the Dodge service, if you know?

26991 A. The cost of the service depends upon the extent of the territory for which it is purchased.

By Mr. Leisure:

Q. What does it cost your company?

A. We spend between five and six thousand dollars a year for it.

26992 Q. Does the Lehigh consider it a complete service?

A. Yes; the most complete service of its kind that is available.

Q. Who in your company has occasion, Mr. Bowen, to use the Dodge, the Institute, and the Bureau of Mines' reports?

A. All the statistical reports in the ordinary routine pass over the desks of Mr. Young and myself, and where they refer to any part to the western territory, copies of it are sent to Mr. Rader, of our Chicago office.

Q. And what do you do with these reports?

A. Consider them as part of the material and information on which to base our plan for the future. One of my duties is to keep in constant touch with our manufacturing department in the matter of making plans for future operation.

In the ordinary course I will sit down with our operating people, periodically, and discuss with them operating schedules for the next three or four or five months, depending upon the circumstances.

All of this statistical data is among the material, and is a part of the material from which I form the opinions which I use in my discussions.

Q. As to these forecasts, then, how do you make your estimate for future business?

A. The first item we would take into account is the contract for future delivery that we have on our
26993 book at the time, and on which we make the best estimate we can as to how much cement we are likely to be called on to ship on those contracts during the period we are considering.

Then we estimate as best we can what tonnage we will be likely to get in the way of current or dealer business during the same period. Then we have got to estimate from the information we have as to the work coming out for bids in the immediate future; how much new business is likely to come into the market during the period, and how much we are likely to get and likely to ship on it.

Those are the principal items, and, of course, in consid-

ering that, we are glad to have all the statistical information we can get because, at best, it is very difficult to make such an estimate, and even the most informed and best estimate we make frequently proves to be not entirely accurate.

Q. Do you use the statistical data of The Cement Institute in this connection?

A. Yes, the statistical data of the Institute is one of the forms of information that we have at our disposal. I don't think it is any more valuable to me than any other because as far as the record of past shipments is concerned, that doesn't help for the future.

So far as the estimates of future construction go, they
26994 are, of course, simply based on the Dodge Company's estimates, and while they are very good and very skilled estimates they frequently don't work out, either.

Q. Does The Cement Institute statistical data give you any data on future business, or is it past shipments?

A. The past shipments don't help us a bit as to the future.

Q. Which does it give you, I mean? The Cement Institute, I was asking you about.

A. I have said that The Cement Institute shipment figures are figures on the past, and, therefore, are of no help in planning a future course, and their estimates for the future are merely based on the Dodge Company's estimate.

Q. Well, Mr. Bowen, from what you have told us, why do you continue to subscribe to the Institute service?

A. Primarily because we are members of the Institute and the statistical information is one of the services that that membership gives us. We cover a rather wide territory and we are interested in all the information we can get.

We pick up all the hearsay in the trade. We get all the statistical data we can. We subscribe to all the services that furnish information to the construction business, and we subject all that information to our own check, based on information and opinion through our own reports, all that we have at hand, to make our plans, to make a complete estimate, so that we can run our business as intelligently as possible.

Q. Does the Lehigh Company subscribe to The
26995 Cement Institute freight rate service?

A. Yes, sir.

Q. And how long has it been a subscriber?

A. During those portions of time in which we were members of the Institute and during which the Institute furnished such a service.

Q. During that time prior to the issuance of freight books by The Cement Institute did you obtain rate books from any other sources?

A. I am sorry. May I have the question?

(Question read.)

A. Yes, before The Cement Institute furnished such a service we had at various times secured books from other sources and have at other times prepared our own books for our own traffic department.

Q. Under what circumstances, then, did you first begin to use the freight rate books?

A. Well, we began to use freight rate books immediately after we discontinued our distributor connections and began to sell through own sales organization.

Q. And were these books made available to your salesmen?

A. Yes.

Q. What delivery points were shown in the early freight rate books used by your company?

A. The earliest freight rate books that I recall, 26996 books in which we attempted to provide the rates to all the destinations at which we sold cement or were trying to sell cement.

Q. And what points of origin were shown in those early books?

A. Comparatively few points of origin. The first ones that I recall showed as points of origin only Northampton and Hudson, N. Y., as I recall them.

Q. How were your books kept up to date?

A. They were kept up to date by supplements furnished to us by our traffic department as changes occurred.

Q. And, then, do you know, or can you recall when you first began to use books which you did not prepare yourselves?

A. As I recall it, the first occasion of that kind was when the Cement Manufacturers Protective Association began to issue books, around 1916.

Q. Were there any differences in the freight rate books issued by the Cement Manufacturers Protective Association and those issued by The Cement Institute?

A. I would say that the principal differences were that The Cement Institute books provided rates from a greater number of points of origin; beyond that, the books were in every case merely intended as a complete statement of the correct rates applicable from the points of origin to the destinations listed.

Q. Do you know whether or not they were substantially the same?

26997 A. Do you mean the Cement Protective Association books? My recollection is they were substantially the same except as I explained, greater number of points of origin.

Q. As you pointed out?

A. Yes.

Q. Has the Lehigh Company subscribed to any freight rate service other than that of the Cement Manufacturers Protective Association and The Cement Institute?

A. Yes, as I recall it, we have from time to time, secured some freight rate information from the National Traffic Bureau, Kansas City Rate Bureau, and also, I think, for a time, from the Nazareth Traffic Bureau.

Q. Were these organizations connected with the Cement Manufacturers Protective Association or The Cement Institute?

A. No, they were not.

Q. I believe you have already told us, Mr. Bowen, that you subscribed to the Institute service when it started?

A. Yes.

Q. Is that right?

A. Yes.

Q. Have you used the Institute freight rate books throughout the life of the Institute?

A. No. We resigned from the Institute during the early part of 1931. Under the terms of our membership we were required to pay dues for some months after
26998 our resignation was filed, and during the time for which we paid dues the Institue continued to supply us with the freight rate information, but after that period had expired we then had our own traffic department furnish us the information and furnish us the supplemental information as to changes that took place.

Q. What information do you consider is made available to you through the Institute's freight rate books?

A. Correct information as to the lowest freight rates

applying from the points of origin listed to the destinations listed.

Q. Does your company make use of the freight rate books today?

A. Yes.

Q. In what respects?

A. We supply them to our branch offices, and in some cases to our salesmen.

Q. Is the use by the Lehigh of the Institute freight rate books today the same as the use made of them, of your first freight rate books?

A. Yes, they serve the same purpose exactly. Of course, they merely give us in the simplest form the rate information so that that information can be used by an ordinary layman rather than by a freight traffic man.

Q. Now, you said a moment ago that, I think, you said you supplied them to your salesmen and they used
26999 them. What use do they make of them? You said you supply them to some of your salesmen, I think.

A. In the cases where we do supply them to the salesmen they use them for the purpose of figuring prices in their respective territories.

Q. When are they not? Under what circumstances are they not used, Mr. Bowen?

A. Oh, a great many of our salesmen cover only one or two towns, or cover a comparatively small territory in which they know substantially all of the prices obtaining in their territory without having to do any figuring. Even in the case of salesmen who cover a larger territory it seems that it is just more convenient to the salesmen and ourselves to give him a list of our prevailing prices in his territory.

Q. Are the Institute rate books used by your traffic department?

A. No. The only function of our traffic department on the books is to check and see that they are what they are supposed to be; that is, correct statements of the freight rates. When a new book is received it is checked by our traffic department. If the traffic department develops that there are any errors in the book, those errors are called to the attention of the Institute and correction is made before the books are turned over to us. Then, after that, our traffic department does the same thing with respect

to any supplements; and if our traffic department
27000. does learn of any changes other than what is contained in the supplements that information is given us and we use that information even before the Institute's supplement comes through. In other words, our whole purpose of our traffic department with respect to the books is to see that they do give us the correct freight information.

Q. What is the function of the traffic department?

A. To put it in the shortest way, it is to give us the lowest most accurate rates from our mills to destinations, to get our shipment to destinations the quickest possible time, and to accomplish the same thing with respect to our incoming purchases.

Q. Well, now, Mr. Bowen, what use, if any, is made by your salesmen of the conversion tables appearing in the freight rate books?

A. Well, they simply have used it as a convenient way of ascertaining what a freight rate cents per hundred pounds equals in cents per barrel.

Q. Do you give any particular instructions to your salesmen with regard to this?

A. No, it is self-explanatory.

Q. In figuring freight rates, does your company drop fractions of less than half a cent and add fractions of more than a half?

A. Yes, when we figure a freight rate from a
27001 per-hundred rate or ton basis or a barrel basis, if the result gives us a fraction of less than a half a cent we drop it. If the fraction is half a cent or more we use the next highest cent.

Q. How long has that been going on?

A. Ever since I can remember; at least 30 years.

Q. Was that the practice during the Cement Manufacturers Protective Association?

A. As far as I know, it was.

Q. Well, now, what has been your experience and observation, Mr. Bowen? Is the Institute freight rate book more or less accurate than the freight rate books you compile?

A. I think there is every reason why it should be more accurate.

Q. Just tell us what your observation is with respect to that.

A. My observation has been that the Institute books have been more accurate than books that we have prepared in the past. They have the benefit of checking from three or four different traffic departments. Are prepared in the first place by people who do nothing else; and, I am not surprised to find that they have been more accurate.

27002 Q. It appears in the record here during the direct case, Mr. Bowen, that The Cement Institute had a code of ethics at the time of its organization. Are you familiar with that code of ethics?

A. Yes.

Q. What was the purpose at the time that you are speaking of? What was the purpose of this code of ethics?

A. Well, at the time that code was prepared there were a number of people in the cement industry who thought that great good could be gotten out of the trade practice conference which in turn might lead to the adoption of trade practice rules.

At that particular time that idea was quite general in a great many lines of business; the formation of The Cement Institute, and the adoption of a code of ethics were the first steps in a plan which it was hoped would lead to a trade practice conference, and to trade practice rules.

Before steps in that direction could be carried out, it was necessary to ascertain in some fashion what companies were willing to subscribe to that sort of a program, so that if the efforts were made it might be completely representative of the industry.

Q. What use was made of the code of ethics by your company?

A. No use made of it by our company. We had no idea that the code of ethics would lead anywhere
27003 unless it should result in a trade practice conference, and in trade practice rules, which might be based upon some basis which might have some basis of enforcement connected with them. Nothing of that sort ever did happen, and, in the meantime, our own company had its own policy of operations and we continued to follow that policy after the code of ethics was adopted just as we had before.

Q. The record shows that the Institute in 1935 distributed a Compendium to the members of the industry. Do you recall that?

A. Yes, I do.

Q. Under what circumstances was it distributed to the industry?

A. I recall that I received a copy of the Compendium from the Trade Practice Committee, but by that time I had no idea at all that the efforts of the Trade Practice Committee were going to be in the slightest degree effective, so this Compendium, to me, was just one more paper from the Trade Practice Committee to be filed.

Q. Did it or did it not purport to represent the best practices in the industry?

A. Yes, as I recall it, that is what it purported.

Q. Now, from what you have said, did you consider that the Compendium would be effective in establishing the practices it set forth?

A. I did not have the least idea that it was going
27004 to be in the slightest degree effective.

Q. Did your company make any use of the Compendium?

A. We did not.

Q. After the Schechter decision did your company endeavor to carry out, or did it not endeavor to carry out, the theory of the N.R.A. Cement Code?

A. Yes, we did.

Q. You mean you did attempt to carry it on?

A. We did. Our attitude at that time was that we were in accord with what seemed to be the general attitude of business at that time. We thought that the objects sought by the Code were praiseworthy. We had been requested by the president of the Institute to cooperate in carrying out the request of the N.R.A. Administrator, to voluntarily observe the provisions of the Code.

We took it that that was the desire of the Administration at Washington.

Q. Passing to another subject: Mr. Bowen, did you attend a meeting of the Southeastern Division of The Cement Institute in July, 1935, at Knoxville, Tenn.?

A. Yes, I did.

Q. Under what circumstances did you attend?

A. When the meeting was called we had no idea as to why the trustee in charge had called it. It was a period immediately after the discontinuance of the N.R.A.
27005 and, as I have already explained we were in favor of complying with the requests for voluntary ob-

servance of Code provisions if that was the general idea of our competitors.

Our object in attending this Knoxville meeting was to find out what sort of a program might be practical. We were in favor, as I say, in continuing observance of the Code provisions if our competitors were. This was the first meeting that had been called in that district after the Schechter decision, and we decided it was important enough to have someone from our downtown office attend it.

Q. As far as your company was concerned, did you have any definite idea on the N.R.A.?

A. No. We were considerably at sea as to what our procedure should be, and trying to ascertain what sort of a program we could develop that might be practical, and that we might want to follow.

Q. What had been the attitude, as far as you know, of the president of the Institute with respect to what you should do?

A. We had received an urgent request from the President of the Institute that we should cooperate in the voluntary observance of the Code provisions, and we were disposed to do so at that time.

Q. Had Lehigh been filing its prices with the Trade Practice Committee of the Institute at that time?

A. Yes, we had.

27096 Q. Do you know whether or not that price filing carried on along the same lines as the price filing under the Code?

A. It was not just the same form, but it was a period of considerable confusion, and I don't know whether all companies were filling their prices. I do, in a good many instances, some of the companies who had filed prices were not observing them.

Q. Do you know whether some companies were filing prices?

A. Yes, some were, but, as I say, it was a period of some confusion, and my recollection is that some companies were not.

Q. I want to call your attention to a Commission's exhibit; the number is 547.

Mr. MacIntyre: What subletters are on that, under 547, Mr. Leisure?

Mr. Leisure: 4-D to 4-I, Mr. MacIntyre.

By Mr. Leisure:

Q. I want to call your attention to that Commission's exhibit and ask you whether or not any reference was made to that document, as far as you know, during the meeting?

A. No, there was not.

Q. While you were in Knoxville did anyone bring Commission's Exhibit 547, to which I have just referred, or a copy of it, to your attention?

A. Yes. A copy of this paper, or a copy of a paper similar to it, was brought to my attention.

27007 Q. By whom?

A. As I recall it, by one of the Respondents of the Signal Mountain Company.

Q. Did you express any concurrence or approval of this exhibit, 547?

A. No. I recognized it as being a restatement of the policy which the Lehigh Company had adopted in April of 1935, and, of course, I was heartily in favor of that policy. I recall seeing nothing in this paper that was not at all inconsistent with that policy.

Q. After the Knoxville meeting, did you change your policy in any way?

A. No, sir.

Q. And are you still following the same policy that you followed before the meeting?

A. We are.

Q. Mr. Bowen, has The Cement Institute, or any of its committees, ever attempted to influence you in your price policy, in any way?

A. No, sir.

Q. Have you ever regarded The Cement Institute, or Trade Practice Committee, as a formulator of your policy with respect to prices, or the conditions under which you might or might not sell cement?

A. I have not.

27008 Q. Have you ever had any agreement or understanding with any members of The Cement Institute, or with any of its committees which, in any manner, restricted you from selling your product in any manner which you chose?

A. No.

Q. I want to call your attention to Commission's Exhibit 14-A. This exhibit consists of minutes and schedules of bids, and it appears that your company submitted a bid

to the Department of Property and Supplies of the Commonwealth of Pennsylvania on May 26, 1937, in which you submitted prices for several destinations (handing document to witness).

Can you tell us how you determined the prices that you submitted on that invitation?

A. We met our prevailing destination prices at the several destinations involved in the inquiry.

The witness identified Resp. Ex. 1299 as a sheet of paper on which two clerks in Lehigh's out-of-town sales office placed its prices for the destinations involved in this inquiry, preparatory to making out the bid. The
27009 figures were placed on the sheet by two different clerks who handled different portions of the territory. One clerk merely listed Lehigh's current destination prices. The other listed the prices and also showed the calculation which indicates that each of the prices reflects a mill base at its Lehigh Valley mills at $1.65.

(RESP. EXS. 1134, 1135 A & B, 1136, 1137, 1138-A,
27010 1138-B, 1138-C, 1138-D, 1138-E, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147 A & B, 1148 A & B, 1149-A, 1149-B, 1149-C, 1149-D, 1150, 1151 A & B, 1152 A & B, 1153, 1154, 1154-B, 1155-A, 1155-B, 1156-A, 1156-B, 1157-A, 1157-B, 1158, 1159, 1160, 1161-A, 1161-B, 1162, 1163, 1164, 1165, 1166, 1167, 1168-A, 1168-B, 1169, 1170-A, 1170-B, 1171-A, 1171-B, 1172-A, 1172-B, 1173-A, 1173-B, 1174, 1175-A, 1175-B, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183-A, 1183-B, 1184-A, 1184 B, 1185, 1186-A, 1186-B, 1187-A, 1187-B, 1188-A, 1188-B, 1189-A, 1189-B, 1190-A, 1190-B, 1191, 1192-A, 1192-B, 1193-A, 1193-B, 1194-A, 1194-B, 1195-A, 1195-B, 1196-A, 1196-B, 1197-A, 1197-B, 1198, 1199-A, 1199-B, 1200, 1201-A, 1201-B, 1202-A, 1202-B, 1203, 1204-A, 1204-B, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213-A, 1223-B, 1214-A, 1214-B, 1215, 1216, 1217, 1218, 1219-A, 1219-B, 1220-A, 1220-B, 1221-A, 1221-B, 1222, 1223-A, 1223-B, 1224, 1225-A, 1225-B, 1226, 1227, 1228-A, 1228-B, 1229, 1230-A, 1230-B, 1231, 1232-A, 1232-B, 1233, 1234, 1235-A, 1235-B, 1236-A, 1236-B, 1237-A, 1237-B, 1238, 1239, 1240, 1241, 1242-A, 1242-B, 1243-A, 1243-B, 1244-A, 1244-B, 1245-A, 1245-B, 1246, 1247, 1248-A, 1248-B, 1249, 1250, 1251 A & B, 1252, 1253, 1254, 1255, 1256, 1257-A, 1257-B, 1258, 1259, 1260, 1261, 1262-A, 1262-B, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1271, 1272, 1273,
27011 1274, 1275, 1276, 1277, 1278, 1279, 1280, 1281, 1282-A, 1282-B, 1283-A, 1283-B, 1284-A, 1284-B,

1285-A, 1285-B, 1286, 1287 A & B, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1295-A, 1295-B, 1295-C, 1296, 1297, and 1298 were offered and received in evidence.)

The witness identified Resp. Ex. 1300 A, B and C as a carbon copy of Lehigh's bid to the Pennsylvania Department of Property and Supplies on the opening of May 26, 1937.

27012 Trial Examiner Norwood: Well, I think they have a right to show it had more words on it than the abstract.

Mr. Paulson: If there is one point in this case which is clear it is the point we are now on, it seems to me.

We have had a great dirth of stipulations in this case, but this is certainly an opportune place for an agreement over the facts. The Commission has never contended that they sat down around a table and agreed on these bids.

The Commission has simply contended that they used
27013 a basing-point system simultaneously and cooperatively in making up their bids, that the result of the common use of that system is identical bids, and that is exactly what these bids show, so I think this is a good time to bring that question out, so that we can get it on the record as to the Respondents' positions, and they avoid any further time demonstrating that they do use the system.

27014 Trial Examiner Norwood: Haven't we already agreed on that particular thing?

Mr. Leisure: Not so far as I know.

Trial Examiner Norwood: That each and every one of these Respondents have arrived at their prices by similar calculations to those put in the record in the case of Alpha.

Mr. Leisure: There has been no agreement along that line on my part. I do not know, there may have been agreements between Counsel for the Commission.

Trial Examiner Norwood: Didn't Counsel for the
27015 Commission admit it, and if he will admit that fact I am certainly not going to receive any further evidence to prove what he admitted.

Mr. Wooden: We certainly do admit it, Your Honor; that is the point of our objection all along, that it is certainly simply showing over and over again what we admit.

Mr. Leisure: And as far as jumping at conclusions that this sheet here represents some method adopted by some

other company, that is what the Counsel would like
27016 to prove.

Mr. MacIntyre: Your Honor please, Mr. Leisure says we are fighting shadows. Well, I want to address myself to this thing, we would rather do that if that is all we were doing before the sun goes down, because if we continue doing this the sun will be down and we can't fight shadows or anything here. So, while we are here let's address ourselves to this point that Mr. Paulson has already pointed out, that it is not the contention of the Government that these people sat down around the council table and agreed on each specific bid that they are going to submit, but it is the system that is involved, the
27017 system. There may be some on which they are agreed, but that does not go to each and every bid. They did not have to do that when they used the system.

Mr. Leisure: Mr. MacIntyre seems to forget that he has alleged in his complaint that there is a system, and that we have denied that there is a system. Now, he is trying to get us to admit that this system, as he calls it, which we have denied existed, is similar to the system, which he calls it, introduced in the Alpha case. In other words, he wants us to admit our case and not prove it.

Trial Examiner Norwood: As I understand it, though, those calculations are just such calculations as would be employed under the system which the Commission has alleged. Now, if there is anything about that paper that shows a different method was used, then, of course, it is receivable, and as an instance here, as the Counsel has suggested, as an instance, here, I see no harm in that particular one coming in.

Mr. Leisure: The fact that the Commission has alleged that there is a system doesn't make it follow and since there was no system it is impossible for me to concede on the record, or off the record, that these figures were made according to any system.

27018 Trial Examiner Norwood: I shall overrule the objection and receive these two exhibits with the statement they are not received as precedent. I am letting them in as illustrative.

(RESP. EXS. 1299, 1300-A, 1300-B, and 1300-C were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Bowen, do all States ask for bids on their total cement requirements for a specified period of time?

A. No. Some years ago a good many States purchased at one time the amount of cement they required for their construction program for a year or more, but during the last few years that practice has fallen into disuse generally, and State purchases now are principally individual purchases for repair or maintenance requirements, or, occasionally, by contract for maintenance requirements over some period of time.

27019 The witness identified Resp. Ex. 1301 as an original inquiry from the Missouri State Highway Department addressed to Lehigh's Kansas City, Missouri, office; Resp. Ex. 1302 as a carbon copy of quotations made by Lehigh's Kansas City office in response to this invitation; Resp. Ex. 1303 as a copy of a letter from Lehigh's Kansas City office to its salesman covering the State of Missouri. The figures in the lower left-hand corner of Resp. Ex. 1301 are calculations made by Lehigh's Kansas City office showing its current market price to the destination concerned the competitive base figure that that price reflected, and the net that the price would give Lehigh at its Iola, Kansas, mill. Resp. Exs. 1301, 1302, and 1303 are representative of the manner in which Lehigh handles invitations

27020 from the State Highway Department in Missouri, and from State highway departments.

27022 (RESP. EXS. 1301, 1302-A, 1302-B, and 1303 were offered and received in evidence.)

Q. Mr. Bowen, I want to call to your attention two Commission's exhibits, bearing the numbers 2450-8-G and 2450-8-H (handing documents to witness).

The witness identified Resp. Ex. 1304 as an orig-

27023 inal invitation from the Missouri State Highway Commission to Lehigh's Kansas City office; Resp. Ex. 1305 as a carbon copy of Lehigh's bid in response to the invitation; Resp. Ex. 1306 as another carbon copy of the same bid, bearing a report from Lehigh's salesman who called on the Highway Commission at Jefferson City. The series of pencil notations and figures in the left-hand corner on Resp. Ex. 1304 are a statement of Lehigh's current destination price at the destination concerned, together with a calculation showing the competitive base figure which that price reflected, and the net which Lehigh expected to receive at its Iola, Kansas, plant. It is representative of Lehigh's manner of bidding on such inquiries, and the manner of showing the price is characteristic of

Lehigh's method of procedure in the case of destinations where it has not previously established a market price.

27024 (RESP. EXS. 1304, 1305, and 1306 were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Bowen, I want to call your attention to Commission's Exhibit No. 2450-K-8, 2450-L-8, and with reference to that exhibit I would like to have marked for identification a letter dated October 16, 1936.

27025 The witness identified Resp. Ex. 1309 as an original invitation from the Missouri State Highway to Lehigh's Kansas City office; Resp. Ex. 1308 as a carbon copy of the quotation made by Lehigh's Kansas City office in response to that inquiry; Resp. Ex. 1307 as another carbon copy of the same quotation bearing a report from Lehigh's Missouri salesman as to the disposition of the order covered by the invitation.

Q. Let me call your attention to Commission's Exhibit 16-B. In that connection, can you tell us, Mr. Bowen, who prepared the bid submitted by your company in connection with the letting described in that exhibit?

A. Yes. The bid was prepared by our Allentown sales office under my instruction.

Q. It was prepared in your Allentown office, was it?

A. Yes, sir.

Q. I notice from this Commission's Exhibit 16-B, that your company, Mr. Bowen, apparently bid prices delivered f.o.b. destination to be figured on base prices set forth in your company's bid, plus freight to destination, and that the exhibit and on the exhibit you did not set forth what purports to be base market prices at 14 producing points. Can you look at the exhibit and tell us where you obtained the so-called base price set forth in Commission's Exhibit 16-B?

27026 A. Yes, except as to the figures at our own mills they were in every case arrived at by ascertaining from competitive quotations in the field, and by the deduction of freight rates from competitive mills, base figures at competitive mills which the quotations of those manufacturers reflected.

Q. Well, in connection with submitting bids to State Governments for their requirements, over a long period of

time, do you make any provision for subsequent reduction in your price, Mr. Bowen?

A. Yes, we do. We ordinarily include in our proposals a clause to the effect that if during the life of the contract our prices should be reduced we will give the State those lower prices during such time as they are in effect.

Q. Let me call your attention to another Commission's exhibit, being Commission's Exhibit 2452-A to C. From this exhibit it appears, Mr. Brown, that your company submitted a bid to the State of Louisiana on January 19, 1931. Is that correct,—and do you recall it?

A. Yes, I recall it.

Q. In connection with submitting prices quoted by your company on that invitation, can you tell us how you determined the price which you submitted?

A. They were our prevailing destination prices at the several destinations as of the date of the bid.

27027 Q. Mr. Bowen, can you identify Respondents' Exhibits Nos. 1310 to 1314, inclusive?

27028 (RESP. EXS. 1307, 1308, 1309 were offered and received in evidence.)

The witness identified Resp. Exs. 1310 to 1314, inclusive, as copies of letters written by Lehigh's Birmingham office to the Louisiana State Highway Commission in connection with reductions in its prices which, under the terms of the contract, were extended to the State during the time they were in effect.

Q. Can you tell me, Mr. Bowen, whether or not these exhibits that you have just identified are fairly representative of the manner in which your company gives to State Governments the benefit of any reduction in your prices during the course of a contract for furnishing requirements over a stated period of time?

27029 A. Yes, they are.

(RESP. EXS. 1310, 1311, 1312, 1313, and 1314 were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Bowan, I have in my hand Commission's Exhibit 1095, from which it appears that your com-

27030 pany submitted a bid to the Soil Conservation Department of the United States Government on April 13, 1937, for cement designated for Corinto, Nicaragua; is that correct, and do you recall it (handing documents to the witness)?

A. Yes, it is correct, and I do recall it.

Q. What, if anything Mr. Bowen, did you have to do in connection with the submission of this bid by your company on that inquiry?

A. To the best of my recollection, the bid was prepared under my instruction, and I personally directed the various steps in connection with getting the information necessary to prepare it.

The witness identified Resp. Ex. 1315 A to M as consisting of papers in connection with a bid to the Bureau of Public Roads for Corinto, Nicaragua on April 13, 1937. It includes letters from Lehigh's Allentown to its New
27031 York office requesting them to ascertain official freight rates; a letter from New York giving that information; a working paper showing how Lehigh arrived at the price bid; copies of the bid itself, and reports from Lehigh's Washington Representative who attended the opening of bids. The witness called off the exhibits (Resp. Ex. 1315 A to M) chronologically, without stipulating each item.

Q. Mr. Bowen, how did you arrive at this price at Corinto, Nicaragua.

27032 A. Before we received this bid we had made a number of bids to the War Department for delivery to the Panama Canal and competition on those bids had developed a market price at Panama which seemed to be pretty generally observed by the manufacturers who had quoted it. We decided to bid to Corinto in the same manner as we bid the Panama Canal.

We found the Panama Canal price, with the Panama Railroad Steamship deducted, was equal to this $1.77 per barrel in paper at New York. Therefore, we ascertained from the steamship companies the water rates, insurance charges to Corinto, added those to $1.77 at New York, and that is the price that we bid.

Examination On Voir Dire By Mr. Wooden.

27033 Q. Can you say whether or not, Mr. Bowen, you used a base price in figuring on these bids?

A. No, we had figured, as I have said, the equivalent out of New York that we got from the Panama Canal business.

Q. I know, but was that the equivalent of your base price, or was it more or less than your base price?

A. The return we received from this bid was less at our Lehigh Valley mills than the base price we were using at the time.

By Mr. Wooden:

Q. Was it less than your arbitrary price at New York?

A. We had no arbitrary price at New York. The price, the New York price, as a base, we used New York as a base point in 1937. Our price in New York at that time was $1.85 in paper sacks, as I recall it, and therefore
27034 that would be less—this bid would be lower than our prevailing New York price at the time.

Q. And how much?

A. My recollection is that our price in New York at that time was $1.85 per barrel in paper, and this bid was built up beginning with $1.77 paper at New York.

(RESP. EX. 1315-A to 1315-M, inclusive, was offered and received in evidence.)

27033 Washington, D. C.,
November 15, 1939.

27036 JOHN C. BOWEN thereupon resumed the stand and testified further as follows:

Direct Examination (Conducted) by Mr. Leisure.

Q. Mr. Bowen, when we adjourned yesterday we were discussing certain prices at destination, and the manner in which you later arrived at those prices.

I would like to call your attention to a Commission's exhibit this morning bearing No. 372. It appears from this exhibit that your company submitted a bid to the United States at Lewisburg, Pa., on September 6, 1935. Will you look at the exhibit?

Well, first, let me ask you, is that correct? Did you submit a bid at that time?

27037 A. Yes.

The witness identified Resp. Ex. 1316 A as a sheet prepared in Lehigh's sales department at Allentown, showing its then prevailing price at Lewisburg, Pennsylvania, showing that it related to its Lehigh Valley base figure of $1.65 per barrel; Resp. Ex. 1316 B, C, and E as a carbon copy of Lehigh's bid to the United States Penitentiary, September 6, 1935; Resp Ex. 1316 D as a letter

which Lehigh received from the penitentiary telling it about the result of the bidding.

27039 (RESP. EX. 1316-A, 1316-B, 1316-C, and 1316-E was offered and received in evidence.)

Q. Mr. Bowen, Commission's Exhibit 792 indicates that your company submitted a bid to the United States Government for the delivery of cement at Monroe, La., on April 3, 1934. Is that correct, and do you recall it (handing document to witness)?

A. Yes; I recall it.

The witness identified Resp. Ex. 1317 as an original letter, of March 30, 1934, which Lehigh received from the Code Authority for the Portland Cement industry informing it of the various price filings received by the Code Authority in connection with the bidding covered

27040 by (Com. Ex.) 792 A. Lehigh used information contained in Resp. Ex. 1317 in determining the prices submitted by it on that invitation. The filing f.o.b. mill at Boyles of $2.15 cloth was its filing, and its bid was made at a price of $1.90 per barrel in paper, which corresponds with the file price of $2.15 in cloth. He identified Resp. Ex. 1318 as an original letter from Lehigh's Birmingham office to its Allentown office, giving a list of the land-grant rates used by the Government in tabulating the bids on this letting. It has always been a custom of Lehigh's salesmen to give it that information whenever and wherever it could be secured. Lehigh keeps the information on hand for use in connection with

27041 Government biddings. He identified Resp. Ex. 1319 as an abstract prepared in Lehigh's Allentown office, and taken from the publication known as the United States Government Advertiser, listing the bids on this invitation.

(RESP. EXS. 1317, 1318, and 1319 were offered and received in evidence.)

Q. Now, you say, Mr. Bowen, that with respect to Respondents' Exhibit 1318 that you received this information from your salesmen. Have you any other source of information for land-grand rates?

A. Yes. In addition to the information which our sales form secures, wherever it is available we regularly secure quotations of land-grant rates from the rail-

27042 road companies, and request such information from railroad companies in connection with any of the

destinations in which those railroad companies are involved.

Q. Is the compilation of land-grant rates, and that information, kept under your supervision?

A. Yes, sir.

Q. Do you use that information, Mr. Bowen, in preparing your bids?

A. Yes, we do use it regularly.

27043 The witness identified Resp. Ex. 1320 to 1348 as representing the information and method in which Lehigh gathered information, as he has just been describing, with respect to land-grant rates. They are part of Lehigh's source of material on land-grant rates, consisting of requests to railroad companies for quotations of land-grant rates and quotations of such rates from the railroad companies.

27044 Q. Commission's Exhibit 277-E and F is a Commission's exhibit that your company submitted—rather, it purports to be a bid to the United States War Department on July 25, 1935, in connection with cement required on the Ohio River, and it indicates that your company submitted a bid; is that correct and do you recall that (handing documents to witness)?

A. Yes, I do.

The witness identified Resp. Ex. 1349 A to K as a carbon copy of Lehigh's bid submitted to the War Department July 25, 1935, in connection with the exhibit previously mentioned.

Q. Have you got Commission's Exhibit 277 there?

A. Yes, sir.

Q. I would like to direct your attention to the item No. 3 of lot 1 in which it appears that your company submitted a bid of $2.22 a barrel, and your competitors submitted bids of prices of $2.20 per barrel. Can you explain the circumstances of that bid, Mr. Bowen, as far as your company is concerned?

27045 A. Yes. One of the items of this bid called for cement to be delivered f.o.b. cars at Dam 35 on the Ohio River. Dam 35 is a separate railroad station on the Kentucky side of the Ohio River with a destination for which no market price had been established by competitive quotations, and it was a typical case of the kind in which we are under the necessity of calculating what the competitive price is likely to be. We knew that the freight

rates to Dam 35 were 2 cents per barrel higher than the rate to New Richmond, Ky. We also knew from our information from the field that competitive prices in that vicinity all related back to a base figure at the Ironton, Ohio, mill.

Based on this information we estimated that the market price at Dam 35 was 2 cents per barrel higher than the price to New Richmond, Ky., and bid accordingly, but when the bids were opened we found that our assumption was incorrect, and that most of our competitors quoted prices 2 cents per barrel lower than we bid.

27047 (RESP. EX. 1349-A to 1349-K, inclusive, was offered and received in evidence.)

The witness identified Resp. Ex. 1350 as a working sheet used by Lehigh's Chicago office in the preparation of the bid covered by the previous exhibit; Resp. Exs. 1351

27048 and 1352 as a memorandum from Lehigh's Chicago office sales department to its traffic department asking them for freight rate information in connection with shipments to Dam 35, and its traffic department's reply giving the information requested. These were all made in the regular course of business with respect to this letting.

27049 (RESP. EXS. 1350, 1351, and 1352 were offered and received in evidence.)

Q. Mr. Bowen, can you tell me whether or not your company submitted any bid with respect to a letting of the United States Naval Air Station of April 16, 1931, that is Pensacola, Fla.?

I show you Commission's Exhibit No. 385-A, B, C, and ask you if that refreshes your recollection.

A. Yes, we did.

Q. At what office of the Lehigh Company was that bid prepared?

A. In our Birmingham sales office.

Q. And can you tell us who calculated the price which was bid by Lehigh?

A. Well, the bid was handled in the manner that was customary in our organization. The first knowledge we had of the inquiry came through a wire from our Birmingham office telling us that they had such an inquiry, and because there were some unusual conditions in connec-

27050 tion with the delivery, they followed the customary practice of computing what they considered the bid

should be but referring the matter to us for definite instructions. Therefore, the bid was calculated in our Allentown sales office.

Q. I noticed as you were talking you used the word "unusual." That, of course, is a comparative term. What do you mean by "unusual"?

A. What I mean is that where a market price has been definitely established, our Birmingham office would, on inquiries received from day to day, quantities that were not out of the ordinary, submit the bid at our market price without submitting each bid to us, but whenever a situation arose in which they were in any doubt as to what our desire might be, their instructions were to submit the matter to us before taking any action.

Q Now, with respect to this inquiry, Mr. Bowen, as to the determination of the amount per barrel: Was that ordinary procedure, or not?

A. I am not sure that I understand your question. The procedure that was followed throughout was a procedure quite customary—was the customary procedure.

Mr. MacIntyre: If Your Honor please, may we have it clear as to what is meant by the question? Ask the amount, if it means the amount of cement in the barrel, the switching charge involved, or the price; we don't know
27051 what the question goes to.

By Mr. Leisure:

Q. Will you explain what was done? You heard Mr. MacIntyre's suggestion.

A. In the particular case in question one of the conditions that was out of the ordinary course was the fact that the Naval Air Station at Pensacola is actually located at Warrington, Fla., a point that takes a freight rate of $8.13 per car higher than the rates to Pensacola proper.

Birmingham was uncertain as to how they should calculate that extra per-car cost of transportation into a per-barrel rate, for the purpose of quoting.

The second point that was somewhat out of the ordinary was that we were quoting at Pensacola, at that particular time, a very low price for that particular delivery, established to meet competition, to attempt to meet competition on imported cement, and Birmingham was not certain as to what procedure we would wish them to follow in calculating an f.o.b. mill price in relation to the Pensacola destination price.

Q. Let me call your attention to Commission's Exhibit 385-B, and ask you whether or not that is the communication to which you referred a moment ago as coming from your Birmingham office (handing document to witness).

A. Yes, that is a copy of the communication we received from Birmingham.

27052 Q. When did you first hear of that letting, Mr. Bowen?

A. Upon receipt of this telegram on April 13, 1935.

Q. I notice on the bottom of the page there are certain figures, writing: Do you know what those represent?

A. Yes; the first pencil writing is a notation by one of the clerks in our Allentown sales office stating that our current market price f.o.b. Pensacola was $2.31 per barrel in cloth. The remaining pencil figures are a number of calculations we made in trying to arrive at the figure we might decide to bid.

Q. Well, after calculating and checking the price, then what did you do?

A. We sent a telegram to Birmingham, as I recall it, instructing them.

The witness identified Resp. Ex. 1353 as the orig-
27053 inal telegram "we" sent to Birmingham instructing them what to bid. Lehigh's Birmingham office had no discretion with regard to the bid which was submitted. They were bound to follow the instructions "we" gave them.

(RESP. EX. 1353 was offered and received in evidence.)

Q. After sending that telegram did you receive any further communications from the Birmingham office regarding this letting, Mr. Bowen?

A. Yes, we did.

Q. Let me call your attention to Commission's
27054 Exhibits 385-C and 385-A. Are they the communications you have just referred to (handing documents to the witness)?

A. Yes. 385-A and 385-C are the communications I had in mind.

Q. On Commission's Exhibit 385-C did you make any use of the information in longhand at the bottom of this letter in connection with the calculation bid, or your instructions to your Birmingham office?

A. None whatsoever. We didn't receive the communication until the day after the bids had been opened, so we couldn't have taken it into consideration.

Q. As to that, Mr. Bowen, you say you received it afterward. Did you have any information prior to the opening of the bid as to how your competitors were bidding, or intended to bid?

A. None whatsoever.

27058 (RESP. EXS. 1320-A, 1320-B, 1321-A, 1321-B, 1321-C, 1321-D, 1321-E, 1322-A, 1322-B, 1322-C, 1322-D, 1322-E, 1322-F, 1323-A, 1323-B, 1324-A, 1324-B, 1325-A, 1325-B, 1325-C, 1325-D, 1325-E, 1325-F,
27059 1326-A, 1326-B, 1326-C, 1327-A, 1327-B, 1327-C, 1327-D, 1328-A, 1328-B, 1328-D, 1328-E, 1328-F, 1329-A, to 1329-N, inclusive, 1330-A, 1330-B, 1331-A, 1331-B, 1332-A, 1332-B, 1332-C, 1333-A, 1333-B, 1334-A, 1334-B, 1334-C, 1334-D, 1334-E, 1334-F, 1335-A, 1335-B, 1335-C, 1335-D, 1335-E, 1335-F, 1336-A, 1336-B, 1336-C, 1337-A, 1337-B, 1338, 1339, 1340-A, 1340-B, 1340-C, 1340-D, 1340-E, 1341-A, 1341-B, 1342-A, 1342-B, 1342-C, 1342-D, 1343-A, 1343-B, 1343-C, 1344-A, 1344-B, 1344-C, 1345-A, 1345-B, 1346-A, 1346-B, 1347-A, 1347-B, 1347-C, 1347-D, 1347-E, 1347-F, and 1348 were offered and received in evidence.)

Q. When we adjourned for recess, Mr. Bowen, I was just about to call your attention to Commission's Exhibit 1042-B and C. That exhibit indicates that your company bid on the letting of the United States Shipping Board for July 25, 1931. Will you look at the exhibit and tell me whether or not you recall that (handing document to the witness)?

A. Yes, I do.

Q. Can you tell us at which one of your offices, Mr. Bowen, this bid was prepared?

A. At our Allentown sales office.

27060 Q. And are you personally familiar with the circumstances under which it was calculated?

A. Yes, I am.

Q. What are they?

A. This information was received in the period immediately after we had discontinued our dealer service plan of marketing and were operating on the basis of a letter to our trade on March 16, 1931, which I have already described.

At that time we were endeavoring to maneuver in every way to place ourselves in a strong position with the dealers, and, if possible, to place our competitors at a disadvantage. When this inquiry was received our first thought

was to submit a bid at the same price as we would have quoted a dealer, basing that on the fact that we had found our competitors quoting similarly in similar cases.

However, before the bid was prepared, our Richmond district manager was informed by one of the Norfolk dealers that he had an assurance from some of the manufacturers who had been requested to bid, that they would, in their bid, protect the dealer.

After ascertaining this information and in accordance with our statements to the dealers that we would protect them to whatever extent our competitors might permit us to, we prepared our bid at a price 10 cents per barrel higher than we were quoting the dealers.

27061 Q. Well, was this 10 cents the customary dealer margin at that time?

A. It was the margin that the dealers in Norfolk were getting, and we proceeded on that basis, on the basis of our letter which, in substance, said that we would respect and observe retail prices of our customers to whatever extent our competition permitted.

Q. Can you tell us any other occasions on which Lehigh bid a price which was more than its current dealer price?

A. No; this is the only one, the only case of the sort that I recall, and I believe it is the only case of the kind.

Q. Now, with respect to these lettings that we have been discussing, Mr. Bowen: You have testified as to some of these papers on public and private lettings. What is the policy of your company in determining the prices it quotes?

A. Our policy with respect to prices to both public and private buyers rests on the fact that the market is at the point of destination. We have what I would estimate would be some seven to eight thousand of such mar-

27062 kets which are steady points of cement consumption, and for which we quote our prices regularly.

Sometimes these prices are prices we have originally quoted. Sometimes they are lower figures quoted by competitors and which we have met. At every one of these markets there is, thus, a market price. That market price is recorded in our records and is the price that we quote.

In some cases that price analyzed, along with other prices, reflects a base figure at a competitive mill. In other cases it does not.

In any event, all we know about competition is what we discover in the field. There is a minority of destinations

in regular or steady outlets, or points of cement consumption for which we would have a market price established in the manner I have described. Only when such destinations are in areas where we have found competitors quoting prices lower than we would figure, is it necessary for us to calculate what our competitor's destination price is likely to be.

Q. Well, now, as to the federal and State work: Do you always sell public buyers at delivered prices?

A. Yes, we do except in the case of the Federal Government where land-grant rates are available, in which case we sell at f.o.b. mill prices.

Q. Now, you told us your experience with respect to delivered prices in the case of private buyers. Do
27063 you know from your experience whether the delivered price is important to the public buyer?

A. I have never found either a private or public buyer who ever determined his purchase of cement on anything other than his cost at destination.

27064 Q. Mr. Bowen, in dealing with the public and private buyers as described, what has been your observation and the extent of that observation as to their reasons for preferring delivered prices? You have already told us that they did so; you previously told us that they preferred delivered prices,—private buyers preferred delivered prices, and the reason, and I am now addressing your attention to any experience you have had as to the reason that public buyers preferred delivered prices?

27066 A. In the course of my experience in the cement business, I talked to a good many hundreds of thousands of buyers, both private and public.

With respect to the first part of your question as to private buyers, I have discovered that private buyers always buy on the basis of their cost at destination, and that the inquiries we receive from such buyers are for quotations at destinations.

Now, I have also had contact with a great many Government buying officers, public buying officers—that is, people who buy for States, counties, and some of the Government branches. Except in areas where land-grant rates apply, I have discovered that the Government officers are also interested in prices quoted at the point of use, and that their inquiries are made on that basis.

By Mr. Leisure:

Q. Now, you say except where land-grant rates apply. What happens where they do apply?

A. Where land-grant rates apply we have quoted
27067 prices f.o.b. mill, so that the Government might avail itself of the land-grant rate.

Q. And as to that, why does your company sell the Government f.o.b. mill?

A. Sell the Government f.o.b. mill because we want to give the Government the opportunity to avail itself of land-grant rates, and because those land-grant rates are applicable only if the Government takes title to the material at the point of shipment. Where title is taken f.o.b. destination the land-grant rates do not apply.

Q. And on what basis is the award made, in your experience?

A. My experience is that the award is made in every case on the basis of the cost f.o.b. destination.

Q. There has been considerable discussion in this record in the direct case concerning a so-called control clause, Mr. Bowen. Do you know the clause I have reference to?

A. Yes, sir.

Q. Does your company use that so-called control clause?

A. We have used it, but are not using it at the present time.

Q. You say you have used it. When you did use the control clause did you submit an f.o.b. mill or an f.o.b. destination price?

A. We submitted an f.o.b. mill price. We used the control clause, our bids in every case provided that
27068 an f.o.b. mill price could be arrived at for calculating invoice purchases by deduction of the land-grant rate from our mill, from the destination cost.

Q. And did you, on that character of bids— Can you tell us whether or not you bid both f.o.b. destination and f.o.b. mill?

A. Yes. On those bids we bid f.o.b. destination price and an f.o.b. mill price through the use of the control clause.

27069 Q. Now, in making these sales, that you have just been describing, to the Government, what was your purpose and what did happen with respect to whether or not the Government took title at the mill?

A. Our purpose was to give the Government a price and to permit the Government to take title to the material f.o.b. mill.

Q. That is where the control clause was used; that you speak of?

A. Right.

Q. There has been some different control clauses referred to Mr. Bowen. What do you know,—can you
27070 just tell us in a word to be sure we are talking about the same thing, the wording of the control clause that you are now referring to, the substance of it?

A. The substance of it was, it provided that from the destination cost mentioned in the bid, the Government might determine an f.o.b. mill price for contract and invoicing purposes by deducting from the destination cost the land-grant rate from our mill.

Q. As to the control clause permitting deduction of the land-grant rate or the commercial rate, whichever was lowest, which appears in the record here, did your company follow that practice, or not?

A. No, for the first part our bids, where land-grant rates were involved, provided only for the deduction of the land-grant rate, the destination cost having been arrived at through the use of land-grant rates. In a very small number of cases we may have provided for the deduction of either the land-grant or the commercial rate, but that was done, to the best of my recollection, only in cases where there might have been doubt as to whether or not a land-grant rate did apply from the point of shipment to the destination concerned.

Q. Let me be sure I have that entirely clear. In cases where you were certain that the land-grant rate was the lowest rate, did you or did you not bid on the bases that
27071 the Government might deduct the land-grant rate from the destination cost?

A. I did, and our destination cost in such cases was computed by the use of land-grant rates.

Q. Did you use this control clause prior to the N.R.A. Code, Mr. Bowen?

A. No, we did not.

Q. How did you quote the Government prior to the Code?

A. Quoted them f.o.b. mill prices without the use of any control clause.

Q. When did you first hear of any control clause?

A. Shortly after the Code became effective we received a notice of the Code authority to the effect that some manufacturers had filed prices in conjunction with the use of a control clause.

Q. And, as I understand you, your company then adopted the control clause; is that correct?

A. Yes.

Q. Why?

A. Well, just about that time we were considerably perplexed as to how we might handle the increasing number of Government inquiries for new destinations in which land-grant rates were involved. Before that time Government purchases involving land-grant rates had been for only a comparatively few destinations at which purchases were made quite regularly, and for those destinations the correct land-grant rate had been well es-
27072 tablished by means of the information made available at previous lettings.

For the great many new destinations, however, the land-grant rates were not as clearly established, and there was considerable confusion as to what the correct land-grant rates were. It seemed to us, therefore, that this control clause was an excellent idea and its use would permit us to give the Government the benefit of land-grant rates and at the same time enable us to make prices that we could hope to be competitive.

Q. How did it work out, Mr. Bowen? I mean, with the use of a control clause such as you have described, how did the laid down cost to the Government at destination compare with the laid-down commercial price at the same destination?

A. It was lower in every case.

Q. Which was lower?

A. The destination cost to the Government was, in every case, lower than our commercial destination price.

Q. What was your purpose: Did you or did you not intend, by bidding with the use of the control clause, to give the Government the same land-grant rate savings as you had formerly given them by using the f.o.b. mill price, before you used the control clause?

A. We aimed to give them exactly the same savings as we had theretofore given them by unqualified f.o.b. mill quotations.

27073 Q. And did you do that, in your experience?

A. Yes, sir.

Q. Well, now, as to that: If this control clause gave the same effect as you previously achieved by quoting a Government f.o.b. mill price, why didn't you just continue to use f.o.b. mill prices, Mr. Bowen?

A. Because, as I have said, there came to be a great increase in the number of destinations involved in Government inquiries. We could and did get quotations of land-grant rates from the railroad companies and believed those quotations to be the correct rates applying, but in many cases the Government applied their own interpretation of the land-grant rates to the shipments and insisted on settling with the railroad companies on the basis of their own interpretation.

Q. How were Lehigh f.o.b. mill bids affected by the Government figuring land-grant rates in a manner which was different from the calculation of your company?

A. Well, if we quoted an f.o.b. mill price which we calculated with respect to what we believed to be the correct status of the land-grant rates from our own and from competitive mills and found that the Government, in its tabulation of the bids, applied some other land-grant rate or rates to these bids; cases where our bid, we hoped to be at least as low as the bid of any other bidders, was actually higher, and we were not able to secure the business.

27074 Q. It appears in the record here, both in the Commission's case and in our case so far, that the Government makes its awards on the basis of a destination cost; but must have an f.o.b. mill price in order to ship on a Government bill-of-lading. Is that the experience that your company has had with sales to the Government?

A. Yes, it is.

Q. As I understand you, the control clause accomplishes this?

A. Yes.

Q. Has Lehigh continued to use the control clause up to the present time?

Mr. Wooden: He answered once.

By Mr. Leisure:

Q. Did you say you were not using it now?

A. I said we were not using it now.

Q. Will you tell us what changed that policy? What happened so as to bring about a change?

A. Well, since this case began we have found an increased amount of resistance on the part of Government buying officers to bids of that kind, and many bids of that kind have been rejected. Hence, we have reverted back to our method of quoting prices f.o.b. mill without using the control clause.

Q. And how is that working out, Mr. Bowen? Do you get any business, as a result of this?

A. Very little, and we now find that in a good
27075 many cases Government buying officers are accepting bids that are made with the control clause.

Q. What has been your observation? What are the factors which led to Lehigh not obtaining this business on its f.o.b. mill bids, which you just described?

A. I have observed many tabulations of such bids, and I found many cases in which we have quoted prices, f.o.b. mill prices, which we had calculated by taking into consideration the land-grant rates from our mill, and the possible competition based on land-grant rates from other mills, but the Government officer, in making his award, has used land-grant rates that differed from those that we had used, and believed to be correct, and placed the business with competitors quoting with the use of the control clause.

27076 In short, we are now finding that the same factors which originally led us to use the control clause are operating against us under our present method of bidding f.o.b. mill prices.

By Mr. Leisure:

Q. And your experience has been that you are or are not getting business, then?

A. Getting very little, and for the past year our effort has been to try to find some method which would be acceptable to the Government buying officers, and which would still permit us to get some business.

Q. Now, referring to the control clause: Did you, Mr. Bowen, ever have any agreement or understanding with your competitors with respect to the use or ceasing to use, with respect to this clause?

A. No, none whatsoever.

Q. There has been another clause mentioned in the case frequently, and that is an equalization clause recently used in bids to the Government.

27080 Q. To be sure we are talking about the same equalization clause, just tell us what you understand by the substance of the equalization clause?

A. I have in mind a clause used during the part year by certain Government departments. This clause has several sections, the most pertinent is that where prices are quoted f.o.b. destination, an f.o.b. mill price is calculated by deduction of the commercial freight rate from the bidder's mill, and, in addition, each bidder is given an opportunity to equalize his bid by undertaking to make a further adjustment of the f.o.b. mill price to the extent by which the difference between the commercial and land-grant rates from the mill of any bidder, exceeds the difference between the commercial and land-grant rates from that bidder's mill.

Q. And have you used that clause, Mr. Bowen?

A. Yes, we have used it wherever the clause has been included in a Government invitation, and have, in a very few cases, voluntarily offered it in connection with Government bids.

27081 Q. Well, tell us, Mr. Bowen, what you did with respect to the previous f.o.b. mill bids. Do you give them the same or something different with respect to this equalization clause?

A. So far as our bids are concerned under the equalization clause, we give the Government more.

Q. How?

A. Because the operation of the equalization clause, if used by all bidders, is that each bidder gives to the Government the same saving in land-grant rates that exist in the case of that bidder, in whose case the difference is greatest.

Q. Now, is the Government continuing to use this equalization clause, did you tell us?

A. In some cases we find Government departments continued to use it, and I will observe that some of our competitors are voluntarily offering the equalization clause in a great many bids where it is not included in the invitations.

Q. And what has been—how is it working out from

the standpoint of your company,—have you had success bidding under the equalization clause?

A. There have been a few cases in which we have secured business on bids where the equalization clause was included as a part of the bidding form.

27082 Q. As to what you had observed, and in the working out, have you observed,—do you know whether the equalization clause has been rejected?

A. Yes, in a good many cases where the equalization clauses have been voluntarily offered by bidders to the Government, those bids have been rejected even though in many cases they would have resulted in lower cost of cement to the Government at destination than the bids that were accepted.

Q. Now, what has been the policy, Mr. Bowen, of your company with respect to determining the price which you bid on public lettings? I want you to consider the land-grant rates where they are not involved, and where they are, what computations do you make in each of these cases?

27083 A. Public inquiries have varied greatly in form, and the way we have handled them has been just about like this:

Where we receive an inquiry from a public buyer calling for a price f.o.b. destination we have quoted our prevailing destination price for that destination. Where the inquiry has called for a price f.o.b. destination—

27084 A. (Continuing) —an f.o.b. mill, we have quoted in addition to the destination price an f.o.b. mill price either specifically f.o.b. mill or by means of the control clause, in each case taking into consideration the land-grant rates from our own and from competitive mills. What I have said applies to cases where we find that our competitors are generally observing and maintaining their published quotations. In those cases we have anticipated that they will do likewise on public lettings although sometimes the event has shown us to be wrong.

When we have found from our observation that competitors are not generally respecting and observing their published quotations but are making prices and taking business at lower figures, we have sometimes proceeded on that assumption and have made prices in the Government bids such as we hoped would be low enough to get us the business.

27085 *Cross-Examination By Mr. Wooden.*

Q. Now, Mr. Bowen, you say that you have had no understanding with regard to the use of the control clause on Government business. You say that notwithstanding the fact that the form and substance of the control clause was put out by the Code Authority and recommended by the Code Authority?

A. Yes, I do say so.

Mr. Leisure: Was it recommended, Mr. Wooden?

Mr. Wooden: No, I say it was.

By Mr. Wooden:

Q. Do you recall that it was put out by the Code Authority?

A. I recall that we received in the ordinary course notice of the filing with the Code Authority accompanied by use of the control clause.

Q. Was there anything in the Code itself that provided for the use of land-grant, or use of the control clause?

A. No, not to my knowledge.

Q. Do you say that the Lehigh Company has quoted to the Government on an f.o.b. mill basis without regard to the use of a control clause or equalization clause, or have you quoted f.o.b. mill unqualifiedly to the Government?

27086 A. Have we done so?

Q. Yes.

A. Oh, yes, many times.

Q. And when, since the Code?

A. Yes.

Q. Can you give me any instance where you have done it?

A. Well, I have testified on direct that we have not, to the best of my knowledge and belief, used the control clause at all for the past year.

Q. Yes.

A. So that my answer would apply to all bids.

Q. Can you give me some instances where you have quoted to the Government f.o.b. mill without some qualification attached to it? I mentioned the equalization as one of the qualifications.

A. Yes. We quoted them almost daily.

Q. Can you give me some particular instance?

A. Well, I recall perhaps 20 bids of that character made to the Procurement Division at Montgomery, Ala., during the past three or four months.

Q. Have you made f.o.b. mill bids to the Government showing the destination, where it was to be used?

A. No.

Q. No?

A. No.

27087 Q. You would not make such bids, would you, without knowing the destination?

Mr. Leisure: Now, what he would do; Your Honor, is not the question. It is what he has done.

Trial Examiner Norwood: He can answer what is the policy about that.

By Mr. Wooden:

Q. You have not done it without knowing the destination, have you?

A. No.

Q. Didn't you ignore the requests of the Procurement Division for f.o.b. mill bidding in 1938 when you did not know the destination?

Mr. Leisure: I object to his using the word "ignore." It depends on what Counsel means.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: I think that he may answer that. This is cross-examination.

The objection is overruled.

A. No, we did not. If the bids that you have in mind were—the invitations—were issued early in 1938, we did not ignore them but wrote the Procurement Division at some length explaining why we could not see our way clear to quote.

By Mr. Wooden:

27088 Q. How many Government departments have used this equalization clause that you refer to?

A. Two that I recall, Mr. Wooden.

Q. What are they?

A. The War Department and the Agricultural Department.

Q. Both use the same clause?

A. As nearly as I can understand it is the same clause; yes, sir.

Q. You say some industry members have attached that

equalization clause as a rider to some of their bids when it was not asked for.

A. I do not know what form, but I have received reports of biddings on which the equalization clause was not included as a provision of the bid, and which our reports showed competitors had made their bids accompanied by an offer to equalize.

Q. Do you mean to say that the War Department has invited bids with the control clause, or that they received some bids with an equalization clause,—I mean, with an equalization clause attached?

A. It is my recollection that the first inquiry of the kind that I ever saw that had equalization clauses was from the Quartermaster Department.

Q. Was that before or after an industrial bidder had attached to the equalization clause to his bid?

A. Before I heard of any.

27089 Q. I understand from your description of the equalization clause that the effect of it is that every bidder agrees to make his delivered price as low as any other bidder; is that correct?

A. No. He agrees to adjust his f.o.b. mill price by the amount of the advantage which any other bidder may have over him with respect to commercial or land-grant rates, but that is a very different thing.

Q. Well, isn't the effect to so adjust his mill price as to make the delivered price as low as any other bidder?

A. Not at all.

Q. Well, what is the difference between the way you describe it and the way I describe it?

A. Well, it just is not the way you describe it.

Q. But wasn't the effect of it to make the delivered cost to the Government equal from all bidders?

27090 A. No, not necessarily at all.

Q. Not necessarily?

A. It will depend entirely upon the prices quoted in the first instance.

Q. Well, then, it is an equalization clause that does not equalize the delivered cost?

A. No. It is an equalization clause equalizing freight rates.

By Mr. Wooden:

Q. Does it equalize the delivered cost?

A. No, it equalizes only freight rates.

Q. And delivered costs may be and are different under it?

A. Might well be, yes; they might well be. It would depend entirely upon the prices quoted by the individual bidders. The equalization is purely one of freight equalization.

27091 Q. Mr. Bowen, in these some twenty cases where you say you quoted the Government f.o.b. mill with the destination known, during the last year, I believe, wasn't your f.o.b. mill cost the equivalent of the destination price?

A. Well, in the first place, there were a great many more than twenty.

Q. All right.

A. I merely cited as one example the twenty cases in Alabama.

You mean by the equivalent of the destination price there was no price arrived at by taking our destination price and deducting the freight rates; if you mean that, the answer is no. They were not arrived at in that fashion.

Q. I asked you if they were not the equivalent of the destination price with the freight taken out.

A. No, they were not the equivalent of our destination price with the freight taken out.

Q. Were they the same figure as the destination

27092 price less the freight?

A. No.

Q. Will you produce the instances that will support your statement?

A. I will refer that to my attorneys, I think.

Q. I ask you to do it.

Mr. Jaques: We will take that under consideration.

Trial Examiner Norwood: Can you cite an instance from memory?

The Witness: You mean an instance that conforms to Mr. Wooden's description?

By Mr. Wooden:

Q. No, that does not conform.

A. Yes. Practically every case of the kind that I am talking about does not conform.

Q. You are talking about Government destination costs now, or commercial destination costs, delivered prices?

A. I am interpreting your question as meaning that

the f.o.b. mill price that we have quoted is the equivalent of our f.o.b. destination price, and thereby—

Q. Or destination costs to the Government. Of course I know it was not the equivalent of your commercial destination price.

27093 A. May I understand what you do mean?

Q. I will put it this way: Can you cite any case where you say you quoted f.o.b. mill to the Government and quoted a destination cost where the f.o.b. mill figure was not the mathematical equivalent of the destination cost with the freight taken out?

Q. I might put it with the word "also" in there: "Also quoted at destination price."

A. In the cases where we quoted f.o.b. mill prices

27094 we did not quote a destination cost to the Government.

Q. Or a destination price, either?

A. Yes; in practically all the cases we quoted the Government an f.o.b. destination price, and an f.o.b. mill price.

Q. And in such case the f.o.b. mill price the mathematical equivalent of the destination price, or the destination cost, either one, with the freight deducted?

A. I am sure I don't understand your question. The bids were bids in which we named to the Government a price f.o.b. destination and a price f.o.b. mill.

Q. Was that your commercial price at destination?

A. In most cases it was our prevailing commercial price.

Q. And you also quoted, in the same bids, f.o.b. mill; is that right?

A. Yes.

Q. Now, was your f.o.b. mill, in such quotations, the equivalent of your delivered price with the freight taken out?

A. No.

Q. Will you produce the records where such things have occurred?

Mr. Leisure: We will take that up; yes.

Mr. Wooden: All right.

By Mr. Wooden:

Q. Do you mean to say, then, that you sometimes have quoted f.o.b. mill to the Government, that was not

27095 the equivalent of your destination price or your destination cost with the freight taken out?

A. Answering the first part of your question, yes; we have frequently quoted prices f.o.b. mill that were not the equivalent of our destination prices.

Q. With freight deducted?

A. With freight deducted.

Q. And you have done that in the last year?

A. Yes.

As to the second part of your question, of course in those cases we didn't bid a Government destination cost, and, therefore, it is impossible to answer that part of the question.

Q. Of course, if you didn't bid a Government destination cost, my question has no application, I grant you that, but I repeat my request to produce the records where you have done what you say you did.

Have you made any quotations, f.o.b. mill to the Government since the N. R. A. Code, that were not accompanied by a control clause, a destination cost figure, or an equalization clause, or without knowing what the destination was?

27097 A. It seems to me that is really two different questions. Answering the first, we have, since the Code was eliminated by the Schechter decision, made f.o.b. mill quotations unaccompanied by control clause, equalization clause, or any other condition.

By Mr. Wooden:

Q. How about the destination?

A. As to the second portion of the question, I do not think we have made any quotations which we did not know the destination.

Q. Well, if your f.o.b. mill quotation in such cases is not the equivalent of the destination price figure, why do you insist on knowing the destination before you will figure on it?

A. Because the cost of transportation from our mill to destination is one of the elements of the competition.

Q. And you deduct that in getting your f.o.b. mill figure, don't you?

A. We take it into consideration, surely.

Q. Don't you deduct it in making your f.o.b. mill figure?

A. Deduct it from what?

27098 Q. From your destination price at that destination.

A. No.

27100 Q. But if you quoted as you did before the control clause you would not have had to bother about the number of instances, would you?

A. Surely.

Q. Or the rates, either, quoted f.o.b. mill?

A. Surely, we would have to bother just the same.

Q. Why?

A. Because I have said that the cost of transportation from mill to destination is one of the elements of competition, and we always take it into consideration.

27101 Q. So you derive the mill figure, then, when you quote f.o.b. mill from the destination price, didn't you?

A. No.

Q. What did you get it from?

A. Mr. Wooden, in every case in which that figure,—in which we figured a mill price after the Code was eliminated—

Q. I am talking about before the Code.

A. I beg pardon?

Q. I am talking about before the Code.

A. Well, I would say in every case after the Code our procedure was, so far as I know, just the same as it was before there was a Code.

Q. Do you mean to say that it was the same notwithstanding the fact you used a control clause after the Code and under the Code, and did not use one before?

A. What I mean to say—perhaps I was not as clear as I should have been—is that when we discontinued it, the use of the control clause, we reverted back—

Q. When was that, by the way?

A. Oh—

Trial Examiner Norwood: Let him finish.

A. —late in 1938 or early in 1939.

By Mr. Wooden:

Q. All right. Go ahead.

27102 A. We then reverted back in figuring our f.o.b. mill prices to the method that we had used before there was a Code and before we used the control clause.

Q. And what was that method?

A. If the calculation was at a time when we found that our competitors were observing their published quotations, then our method was to calculate with considera-

tion to the land-grant and the commercial rates from competitive points and by analysis of their current destination prices—

Q. You took the regular destination prices in those days, did you?

A. Our price f.o.b. our mill which we hoped would result in the cost of our cement at destination being as low, at least, as the cost of any of our competitors.

By Mr. Wooden:

Q. In other words, the f.o.b. mill figure you arrived at was then nothing but the equivalent of destination figure with the freight subtracted, wasn't it?

27103 Trial Examiner Norwood: Is that a fact or is it not?

The Witness: Your Honor, it is not a fact as to most cases. With respect to cases where land-grant rates were a factor in the calculation, in most cases the figure was not the sort of a figure that Mr. Wooden says.

By Mr. Wooden:

Q. And how did you equalize the delivered price with what you hoped competitors would quote except by taking out the amount of freight that would result in equalization?

27104 A. The question is not at all clear to me. We did not quote a delivered price under those circumstances. We quote f.o.b. mill price.

By Mr. Wooden:

Q. I know you did, but you said you hoped to quote such an f.o.b. mill price that would be competitive at destination.

A. Yes, sir.

Q. Didn't you make it the same at destination as your competitors quoting at that destination?

A. Not at all.

Q. What did you mean?

A. I meant exactly what I said, to make it as low, at least, as any of my competitors.

Q. Did you intend to make it any lower?

A. In some cases, yes.

Q. Did you intend to make it any higher in some cases?

A. No. I would not bid if I intended to make it

27105 higher. I would save the postage.

Q. Do you mean to say that you have deliberately

and intentionally made your prices lower at destination than your competitors?

A. I do not know what you mean by the term "deliberately" and "intentionally." I have repeatedly testified the manner in which the Lehigh Company has made its prices on public lettings, that sometimes we have based those prices upon the assumption that competitors were observing their published quotations, and that they would be likely to do so on public lettings. In some cases we found that that assumption proved to be incorrect. In other cases, we have accepted as a going condition of competition the fact that competitors were not respecting and observed their published quotations and have made prices that we thought would be low enough to get the business.

Q. Did you deliberately cut under such prices, or did you just meet them?

A. Deliberately cut under our own prices?

Q. The prices you say when the competitors were not observing their published quotations. Did you go under what you learned them to be quoting?

A. Mr. Wooden, how could I, if I received an
27186 inquiry for a carload of cement, how could I go under what a competitor had quoted on that entry when the bidding was a public bidding? All I had to go by was the quotations he had made on other business.

Q. I know that I am asking you: Did you deliberately go under that or did you just meet what they did in other cases?

A. In most cases a situation of that kind involved different destinations, and, therefore, there was no direct comparison possible.

Trial Examiner Norwood: Well, in cases where they were possible, did you intentionally bid lower than you figured that your competitor would bid?

The Witness: Your Honor, in most of those cases, judging from the competitive quotations in the field, I had no way of telling what a competitor might bid, and therefore, my efforts to make a price couldn't be said to have been based either on a desire to bid as low or lower.

Trial Examiner Norwood: Did you ever do so in any single case?

The Witness: Your Honor, I can't answer the question any more clearly, I don't think, than I have tried to.

At any period where I found competitors making all sorts of prices, and had no guide from which to judge what sort of a price might equal or better the competitive price, the effect was more or less with competition in the dark.

27107 By Mr. Wooden:

Q. You testified that you calculate what the delivered price of competitors is likely to be.

A. I do in those cases where the market hasn't been established.

Q. And you calculate it, do you not, by taking the lowest combination of base price plus freight to that destination?

A. I calculate it by assuming that in a territory where a competitor figures all of his prices, that I can find, in one way, that he will calculate the remainder of them the same way.

Q. Will you answer the question as I put it?

A. Mr. Wooden, I can't answer the question as you put it because your question assumes that the prices that I find are prices that are composed, as you say, of base price plus freight; I find no such prices. The only prices I find are in the field.

Q. You don't know how those destination prices are made up? Don't you figure them up and find out the base composition of them?

27108 A. Of course, I apply whatever analysis I can to all competitive quotations, and in some cases I find that they do reflect the apparent use of a base figure, but in many other cases I do not.

By Mr. Wooden:

Q. But in the most of the cases doesn't it reflect the lowest combination of base plus freight?

A. In most cases I find the competitive situation is they do use base figures.

Q. And the lowest combination of base price plus freight. Don't you find that to be the case in most instances?

A. No. I find, where I do find a competitor using a base figure, I find that his quotations apparently reflect the use of his own base figure. There is no combination involved.

Q. And you try to quote in such a way as to meet the delivered price of competitors in such cases?

A. Where I find the competitor by published quotations has established a market lower than my own, I meet it if I can, or refrain from quoting.

27109 Q. Have you not followed the policy generally of making your delivered prices at given destinations the same as delivered prices of your competitors?

A. I follow the policy of making my prices in the market—

Trial Examiner Norwood: I think you can answer that question "yes" or "no." You do that or you do not do that.

27111 The Witness: Your Honor, I submit that I can't answer that question "yes" or "no".

Trial Examiner Norwood: All right. Go ahead.

By Mr. Wooden:

Q. Why can't you? You don't know what the genera policy of your company is?

A. Yes, I do.

Q. Is it that, or is it not?

A. It is neither; neither that nor—

Q. In other words, you don't make your prices the same and you don't make them different, either. Is that what you mean?

27112 A. Where we quote I attempt to make them the
27113 same as the lowest quotation I find in the market, and I should like to explain, if I may, that I have discovered upon frequent occasions, in fact, I discover in most markets, that the competition is limited as to the number of manufacturers who quote in the market.

Those manufacturers who are unwilling to continue in competition in the market do not quote the higher
27114 prices at which they might be willing to take business, but when they realize that their prices are not competitive, merely refrain from quoting.

By Mr. Wooden:

Q. Is it the policy of your company not to make delivered prices that are lower than the delivered prices of your competitors?

A. No, it is not our policy. Our policy is not as you describe it, and the test of it is that we have frequently made prices lower than our competitors, but as to those prices they remain low only until those of the competitors who remain in the market, have an opportunity to meet them.

Q. In what percentage of your present business are your prices lower at destination than the destination prices of your competitors?

A. I don't think they are lower in any case, or, if they are, they are in an insignificant number of cases.

Q. You don't want to make them lower, do you?

A. I have answered that question by saying that we frequently have made them lower, but whether they remain lower or not is governed by our competitors, not by ourselves.

Q. How recently have you made them lower?

A. Our movements of prices are not uniform the country over. We move from time to time in various districts, as the occasion seems to us to warrant.

27115 Q. Can you tell me when and how recently you made your delivered prices lower than the delivered prices of your competitors?

Trial Examiner Norwood: You mean at a given point?

Mr. Wooden: Yes; any destination.

A. Well, I don't know that this is the latest case that I recite, but, as I recall it, in the early part of 1937 we did, throughout large portions of the Southeast issue quotations at lower prices than our competitors.

By Mr. Wooden:

Q. You mean you reduced your base price?

A. Reduced our prices.

Q. All your changes are done by reduction or change in your base price rather than change in delivered prices; isn't that right?

A. No; all of them are done through reductions in our delivered prices. We have no base prices.

Base price, according to my interpretation is a price at which we would sell.

Q. What is this base figure at your mills, that you refer to? Is that a base price, or what is it?

A. No, I don't consider it—

Q. What is it?

A. It is a figure used for the purpose of computing our delivered prices, in some instances.

27116 Q. Isn't that base figure your mill net for the customers in the territory where that base figure plus freight makes the lowest delivered price?

A. It is the equivalent of our mill net. That delivered

price includes the full amount with the mill base figures, surely.

Q. You are quite well aware, are you not, that "base prices" is a term commonly used in the industry; aren't you?

A. No. I have heard a whole lot of people talk about base prices, but I have heard a great many people who don't talk about them.

Q. Were you ever aware that the industry has frequently and commonly used the expression "The basing-point system"?

A. I have frequently heard the expression used pertaining to the industry. I have heard it much more outside than within the industry.

Q. Have you ever heard it used in your own organization?

A. I have heard it used in conversation; not heard it used as in any sense as the basis on which our prices are made.

Q. Haven't you seen writings of officials of your company in which they referred to the basing-point system?

A. I don't recall any, specifically.

Q. Didn't you serve on a Marketing Research Committee, or on a subcommittee of that committee which was devoted to a study of the basing-point system?

27117 A. I served for a time on the Marketing Research Committee of The Cement Institute, and the object of that committee was to study the whole field of cement marketing prices.

Q. Didn't you see communications of members of that committee to each other apropos of the employment of Professors Clark and Burns to study the basing-point system?

A. I have seen a great deal of—

Q. I am referring to the basing-point system.

A. I have seen that term used in the correspondence, yes.

Q. What does it mean to you?

A. It means to me that to the extent that manufacturers' prices reveal any use by those manufacturers of basing points and base figures, that that, upon analysis, sometimes is called a system. That is all it means to me.

Q. Well, in other words, is your only objection to the word "system" or is it also to the words "basing point"?

27118 A. I have no objection to either set of words. All I am concerned about is the actuality of the condition, not any phraseology used to name it.

By Mr. Wooden:

Q. Well, do you take exception to the use of the word "system" in that connection, or do you also take exception to the use of "basing point" in connection with the expression?

A. No, I do not think I take exception to the use of either word.

Q. All right. Then, you would not contend, then, that there is no such thing as basing-point system?

A. Well, again, I do not know just what is meant by the term "basing-point system." I know what I—the

27119 only exception that I take to either wording is when that wording is used to indicate that our prices are the result of taking a set of known-in-advance base figures, as I call them, or base prices, as you call them, and that my prices are arrived at by a formula which takes such a set of figures known in advance and uses them to determine my delivered prices. Now, when the term "basing-point system" is used to indicate that sort of situation, I do take exception to it because that is not the way in which our prices are arrived at.

Q. Well, didn't you identify some papers yesterday that showed that your quotations to the State of Missouri were arrived at by use of basing-point figures plus freight to destination, and weren't those typical of your method?

A. Those quotations to the State of Missouri were typical of our method used under those circumstances, and, as I testified this morning, the only occasions in which we have to attempt to calculate what competitive prices are likely to be is in the comparatively small number of cases in which a market price has not been established by prior quotations, and where those destinations are to points in areas where we find competitors' prices fixing a market.

Q. Now, in that connection I call your attention to Commission's Exhibit 2160-A to E, inclusive, the same being the work sheets for your company's bids to the State of Illinois, and every county in the State in 1932. Do

27120 you mean to say that you had no information at any of those county seats about the destination prices at those county seats, and, therefore, you had to use the basing-point figures for every county seat in Illinois?

27121 A. Well, answering the question, of course I would not say that we did not have information as to market prices at all the county seats in Illinois. On the contrary, I would say that we undoubtedly have the information as to most of them.

By Mr. Wooden:

Q. Well, what do you mean by your testimony in explanation yesterday that you used the basic point plus freight only where you did not have the destination price, now used in every county in the State, where you say you did have the destination price?

A. Mr. Wooden, I do not think I did say what you include in your question. I said that the only occasions in which we had to calculate what a competitive price market was likely to be was under the circumstances that I described. Now, as to the general question without analyzing this particular set of figures, or attempting to comment on the circumstances under which they were prepared, I will say that it is quite common practice with us,
27122 having developed the competitive situation thoroughly in the field, to use as a short cut in those areas computations of basic figures and freight rates. That price is, however, subject to automatic, practically instantaneous check-up from the field because when our quotations reach the hands of our dealers, if they are not as low as competitive quotations the dealer is very quick to tell us of it.

27128 Q. Do you think it is lacking in sense on the part of the buyer to want to buy f.o.b. mill and see if his destination cost thereby is not less from one mill than from another mill? Do you think that is silly, or what do you think about it?

A. Well, I have no particular opinion as to whether that is silly or not. I do have an opinion which is that prices quoted in that way would not result—be likely to result in any reduction of cost to the buyer at destination.

Q. Didn't you find in your testimony regarding trucking that buyers did find there were differences in their laid-down cost when they bought at the mill and trucked it?

A. I do not think that I testified as to that specifically.

Q. That is a fact, anyway?

A. Beg pardon?

Q. That is a fact, isn't it?

A. To some extent it was; yes, sir.

Q. Answer it any way you like, then.

A. Accepting your use of "base price" as being the same as I term "base figure," I find that the price at which a non-basing-point mill was located does, ordinarily, reflect a base figure at some other mill.

Trial Examiner Norwood: And consists of that base figure plus freight from that base?

27135 The Witness: The base figure, Your Honor, is equal to the destination price minus the freight.

By Mr. Wooden:

Q. What is the destination price equal to? Isn't it the base price plus the freight?

A. I have no way of knowing how the other fellow computes his price. All I have, at any time, is a delivered price found in the field from which I can make such an analysis and draw such conclusions as I see fit.

Q. So you don't know how your competitors who are non-basing-point mills figure their prices at all, do you?

A. Of course not, except by an analysis of their quotations.

Q. And you don't know from the delivered prices what competitors enter into it?

A. Only by analysis.

Q. And when you have done so have you not found that they were composed of basing-point price plus freight?

A. Some cases yes and some cases no.

Q. Can you tell us where, at the present time, outside of these areas where arbitrary prices are in effect to meet foreign competition, the destination prices are not the equivalent of some base point price plus freight?

A. Yes, I can cite you quite a number of places.

For instance, all of the cement we sell in Washington and points for a considerable distance around Wash-
27136 ington are sold at prices which we can't relate to any going base figure combined with freight.

Q. Isn't that a well-recognized territory of arbitrary prices?

A. Well-recognized area with me where the prices do not conform to the definition you have set.

Trial Examiner Norwood: Is or isn't Washington, D. C., recognized as a district in which arbitrary prices prevail?

The Witness: Your Honor, I was asked to state terri-

tories in which I found prices which did not relate to any base figure combined with freight.

Trial Examiner Norwood: That was not what you were asked; you were asked with respect to Washington district.

27137 Trial Examiner Norwood: If you don't know how it is regarded, you can say so.

The Witness: I have answered, Your Honor, by saying all I can answer is I find competitive quotations in that market which do not conform to the definition which has been stated to me. I find many others of the same kind.

By Mr. Wooden:

Q. Your delivered prices in that area are the same as the delivered prices of competitors, aren't they?

A. When we found competitors making lower prices in Washington, we met them.

Q. Then do you mean to say that the cement manufacturers, in selling in those areas around Washington, don't recognize it as an arbitrary area where the prices are not the equivalent of base price plus freight?

A. Of course anyone who quotes there must recognize it as not conforming to that definition.

Q. Well, now, all such cases aside, I am asking you to tell us where the delivered prices are not the equivalent of some base price plus freight.

A. As I understand that question, it means laying aside all places where you find that they don't conform. Where don't they? I can't answer that.

Q. No; I said laying aside recognized areas

27138 where arbitrary prices are in effect, tell us where the base price plus freight does not make the equivalent of the delivered price.

A. Mr. Wooden, I can't say what is meant by recognized areas. Various places throughout the country, and in a great many odd locations I find prices that don't conform to the definition of base figure combined with freight.

Q. I am asking you to tell us any such cases.

A. Baltimore, Md., and surrounding territory; territories around greater New York and many delivery points in Greater New York; throughout the Northeastern territory; I think of a good many isolated cases of the kind. For instance, around Providence, Rhode Island, there are half a dozen points of that kind.

Q. Let us get at it this way: Can you tell us any points in Illinois where the destination prices are not the equivalent of base point plus freight?

A. I am not in direct contact with the detail work in Illinois, but I believe that Chicago would come under that heading.

Q. That is based on a silo base price, is it, or warehouse price; in Chicago?

A. It is a price quoted by the Universal Atlas Cement Company which I can't reconcile with the base figures I find.

Q. Well, that is another arbitrary, isn't it?

A. Well, in the sense of making the distinction
27139 between prices that do conform with that definition, and all others being arbitrary; if you use that definition.

Q. Can you name any other places in Illinois or Iowa or any States around there where the base price plus freight is not the equivalent of the destination price?

A. As I said, I am not in as direct contact with the details in the western territories as in the East, and, therefore, I am not in a position to answer that question.

Q. Can you name any places in Pennsylvania where that is not the case?

A. Yes; Pittsburgh comes under that heading.

Q. In fact, all points with switching areas come under the heading, don't they, as a matter of fact, using a minimum line-haul rate instead of the varying switching charges?

A. No. I found a variety of practice in that respect, and, of course, where the plants are competitive plants we meet the prices as we find them irrespective of their apparent competition.

Q. You meet them on the basis of minimum line-haul rate in the switching districts, don't you?

A. I said in some areas they indicate the use of minimum line-haul rate, but in others they don't.

Q. Isn't it a fact, Mr. Bowen, that in the territory of the Lehigh mills, and except for these areas that you have named where arbitrary prices are put into effect for various reasons, that the destination prices are
27140 the equivalent of base price plus freight?

A. Well, I, by no means, named all the areas in

which the prices do not answer that description, but I will say that except as to where I find prices that don't answer that description, I do find that prices in general relate to a base figure plus freight.

Q. Among the six or seven thousand destinations where you make quotations, or have dealers, or whatever the facts are, you mentioned six or seven thousand; how many of those destinations do not reflect destination prices that are the equivalent of base price plus freight?

A. It is difficult to make an estimate, but I would estimate that somewhere from eight to ten percent of the destinations do not.

Q. Now, another point, on this land-grant matter: When you quote a destination cost to the Government is your mill net on that destination cost the same as your mill net for commercial business quoted at the same destination?

A. No. It might be in some cases but there would be a great many cases where it wouldn't be.

Q. Don't you figure back from the destination price on commercial business to find out what mill base should go into your destination cost figure?

27141 A. Well, I start first with my own base figure and from the competition in the field, attempt to compute whether that base figure quoted as an f.o.b. mill price is likely to be as low as my competitor. If that is so, then I quote, in some cases, the f.o.b. mill price, which is the base figure, and, in most cases, usually the net would be the same as the net on commercial business.

However, where I find that that mill base figure is not sufficiently low for meeting the competition, then I must quote a lower f.o.b. mill figure, which takes into account the probable and possible competition of competitive mills that have a greater land grant advantage.

Q. But in such case your mill figure would be the same as your mill net on commercial business delivered to the same point, wouldn't it?

A. No, not necessarily. It might be lower.

By Mr. Wooden:

Q. As a matter of practice, what has it been? Hasn't it been the practice and policy to make it the same as the mill net on your commercial business?

27142 A. No.

Q. It might be higher?

A. It might, in some cases, be higher.

Q. In other words, you might quote the Government at a higher mill net than you would commercial business, on the same destination?

A. It has been done.

Q. Why do you do that?

A. Because from our knowledge of the competition in the field it seems to us that that price will tend to bring our cement at destination at a competitive figure.

Q. In other words, you are willing to charge the Government more than a commercial buyer at the same destination provided your competition will permit you to do it?

A. And in more cases, charge them less.

Q. But you are willing to do it more, as well?

Now, Mr. Bowen, in the course of your rather lengthy direct examination have you refreshed your recollection from time to time from papers and documents other than those shown to you while on the witness stand?

A. I don't quite understand.

Q. I don't know why it should take so long for you to make that answer.

A. Do you mean I have looked over the exhibits in the course of my testimony? No, I don't recall that I have.

27143 Q. Haven't you looked over, from time to time, notes that had been made covering the substance of your testimony here?

A. Oh, yes.

Q. Have you done that in the room here?

A. Not during the course of the hearing. I have, from time to time, looked at the memorandum that Counsel had.

Q. Has that been done during recesses?

A. After the hearing was adjourned.

Q. Sometimes between recesses?

A. I don't recall that I have.

Q. Have you sometimes referred to them outside the hearing room, also?

A. Oh, yes.

Q. Do those papers consist of questions and answers covering the substance of your testimony?

A. They consist of tentative questions, and I have ad-

vised Counsel from time to time of the facts on which my answers would be based.

Q. You made writen answers to the tentative questions?

A. I think that the answers were taken down, yes.

Q. Have you refreshed yourself on those, from time to time, during the course of your testimony?

A. Between hearings I have looked at my notes.

Mr. Wooden: Now, Your Honor, I am going to follow the precedent that was set by Counsel for Re-
27144 spondents when they demanded the production and the examination of the report made by Messrs. Royal and Bass, and which they referred to out of the hearing room, and I think that the same course of action should be followed here. That, for the purpose of this cross-examination, that the questions and answers prepared in advance of the hearing, and to which the witness has testified he referred to, should be submitted for cross-examination.

Mr. Leisure: Now, Counsel has asked for pretty nearly everything else in this case since we have started, and I am not surprised that he is now asking us for our trial brief. The facts are that in preparing these witnesses for testifying it is necessary to bring them in and ask them certain questions, and to get their answers, and when they have made these answers in order that we may go along and ask the questions orderly and not waste the colossal amount of time Mr. Wooden wasted when he was putting in his case, we have taken the questions down and we have left out many questions and tried to get at the very heart of the discussion.

In preparing our trial brief we followed that procedure. Now, I object to any practice of Mr. Wooden getting a peek at our trial brief. I don't know of any reason for it.

If he wants to impeach the witness in some way,
27145 or if he wants to charge us with any improper practice, his way is open, but—

Trial Examiner Norwood: I think he is requesting any document that the witness has referred to, since he has been on the stand, to refresh his memory. If previous answers of his have been written down and he has reviewed them, I think that is what he wants.

Mr. Wooden: That is right.

Mr. Leisure: The witness has not referred to any docu-

ments on the stand, and he has not refreshed his recollection from any documents on the stand.

Mr. Wooden: Neither did Mr. Bass or Mr. Royal.

Mr. Leisure: As to the preparation that we have done during the course of the case, as to our trial brief, I don't know of any rule that will allow Counsel to take our trial brief.

Trial Examiner Norwood: He is not referring to any trial brief.

Mr. Leisure: That's what he has asked for.

Mr. MacIntyre: If Your Honor please, the documents now in question couldn't properly be described as a trial brief if the witness, in the hearing room, becomes the student of the trial brief that contains answers that are expected for him to give, and if that is the case it has lost its dignity of a trial brief, and becomes a
27146 document from which the witness refreshed his memory, and can be used for cross-examination.

Mr. Leisure: Mr. MacIntyre probably knows of much more expeditious ways of preparing testimony and presenting it. We have tried to get the witness' answers to certain questions raised by the pleadings.

27149 Trial Examiner Norwood: If the witness had been posted throughout the process of giving his testimony here, or his answers at some previous time have been taken in the office, and they have been brought here during the process of the giving of his testimony, and he has memorized them, I think that they ought to be produced.

Mr. Leisure: If there is any charge of coaching of the witness, I think Counsel should come out direct with it and not through the back door. If he feels we have followed any improper practice, I think he should come out directly with it.

I think Mr. MacIntyre further incorrectly stated the record when he said Mr. Bowen had testified that he had refreshed his recollection during the intermission here, in any way.

Trial Examiner Norwood: I don't think this witness specified five-minute recesses.

Mr. Leisure: He was asked that question specifically, and he said he had not, but over the course of the evening he had gone over these things with us. I have already stated that our method in preparing these witnesses where

we have 75 corporations to deal with, that we have had no other method to follow than to bring in the witnesses and to ask them certain questions, and in certain instances and which we shall continue to do unless we get some
27150 ruling authority that there is something improper about it, we have taken down their answers to the questions asked them.

By doing that, we have been able to eliminate thousands of questions we do not need to ask them on the stand.

The questions which we think are material and relevant, and the answers which we think are material and relevant, we have saved those and put them in the form of a trial brief, and from the trial brief we have asked the witness those questions. If there is anything improper about that practice, let us come out in the open and have a charge made against us that we are following improper practice here in coaching witnesses. If that is the charge let us have it out in the open and meet it in that way.

If, on the other hand, it comes under the heading not of improper practice of attorneys, but that a witness has examined documents to refresh his recollection on the witness stand, then we know how to meet that. That is not this case. It has not been done, according to the witness' testimony, and we have got another situation.

Trial Examiner Norwood: I think anything that he has used to refresh his recollection, or to review the facts while he is on the stand; that is, during those days,
27151 that his status is that of a witness; I think that the Commission's Counsel have a right to see it, and I think that the Respondents have urged and insisted on that, and I think they might take their own medicine.

Mr. Leisure: No, that was why I was careful to point out the difference. One thing is a contemporaneous document prepared by a witness who was testifying as to facts. If Mr. Bowen, as to any of these factual situations that he had testified to had taken memorandums or notes at the time, and had refreshed his recollection from them, then I think they would have a right to see them in order to tell whether or not his memory had deviated as of the notes taken down at the time, but when you have a witness who comes in and particularly when you have hundreds of witnesses, as you have in this case, and we have taken down their answers to thousands of questions, and weeded out the necessary ones in the hope of saving time in the

court room, and we have put that in the form of a trial brief, I think that is something entirely different from the situation of Mr. Royal.

Trial Examiner Norwood: I do not say that it is different, if he referred to it while he is a witness, and in this other case these Government officials were merely reviewing their own writings which they were not assisted in making in any way whatsoever.

27152 Mr. Wooden: In other words, the argument for production of papers this witness has referred to during the course of his examination is immeasurably stronger than it was for the production of the papers that Messrs. Royal and Bass had made in the course of their official duties, and I am simply asking the same thing that they asked of us, and went to the Commission with, and which they finally got.

Mr. Brick: Well, now, that might be the situation, that is, Mr. Wooden is trying to draw a parallel between two different situations entirely. This witness, I do not think, and I do not think it is claimed, that he is taking up anything to the stand with him, and has more or less surreptitiously referred to it in the course of his testimony. What he has done, he has done openly.

Now, Mr. MacIntyre referred to something, that the witness glanced at some of his notes. Well, we have only had a few recesses, and I am sure that Mr. MacIntyre would have brought that to our attention at the first opportunity if he thought the witness had been doing anything improper.

Mr. Wooden: What difference does it make, whether he went there during a five-minute recess? He has been refreshing his mind from those papers during the course of his testimony.

27153 Mr. Brick: Well, do you want to give us your trial brief?

Trial Examiner Norwood: Well, Counsel has been requested to produce them, and he can refuse, and I have nothing further.

Mr. Leisure: Well, frankly, I would not have the slightest objection to Mr. Wooden taking our entire trial brief and reading it. There is nothing in it to hurt him or to hurt anybody else, but I do not think it is a proper request, and for that reason I am going to object to it.

Mr. Wooden: Your Honor, in the interest of shortening

the whole proceeding, I am willing to make a proposition that since Respondents' Counsel have prepared written questions and answers for various witnesses, that we will stipulate that those questions and answers might be offered in evidence in lieu of the witness, subject to our right to cross-examine and objection.

Mr. Leisure: Well, now, that is the point I wanted to bring up, and that is why I tried to meet this thing directly in the beginning, to find out what this charge was. The statement is very incorrect, if Mr. Wooden states that we have prepared answers. In no instance have we changed any answer that a witness has given us. When the witness has made the answer, we have taken down those answers, and he can examine this witness, and
27154 others under oath as to whether or not at any time we have done that; and as to the suggestion that we have prepared answers, I want to say now that that is not a correct statement of fact.

Mr. Wooden: I did not say that you had prepared answers. I said answers had been prepared.

Trial Examiner Norwood: No, I do not think he meant that.

Mr. MacIntyre: But the offer still stands, as I understand, by Mr. Wooden, that we can save considerable time rather than going through the formality of having a witness on the stand and having the questions put to the witness on the stand and answers coming from him.

Mr. Leisure: I would like to oblige, and perhaps we can save a lot of time, as I understand it, that will waive all cross-examination?

Mr. Wooden: Oh, no.

Mr. MacIntyre: No.

Mr. Leisure: Yes. We will submit the brief, if you will take it, and that will end it, and we can get on to your rebuttal.

Trial Examiner Norwood: No, no, he stipulated that he was to cross-examine.

Mr. Briek: He did stipulate that, Your Honor—

Trial Examiner Norwood: Let's proceed, gentle-
27155 men, with the examination of this witness.

Go ahead.

Mr. MacIntyre: Do we understand, Mr. Leisure, that we will not receive these from you for cross-examination?

Mr. Leisure: Our trial brief?

Mr. MacIntyre: No, these papers this man has referred to during the course of the cross-examination.

Mr. Brick: They are all in evidence.

Mr. Leisure: They are in evidence, except our trial brief which we have prepared in the manner I have described.

As to submitting to you our trial brief, I think it is a foolish request and I am not going to accede to it.

27160 Washington, D. C.,
November 16, 1939.

27162 JOHN C. BOWEN thereupon resumed the stand and testified further as follows:

Cross-Examination (Continued) by Mr. Wooden.

Q. Mr. Bowen, do I understand that your testimony that the Lehigh Company has never had any agreements or understanding with its competitors or with dealers regarding prices applies to the entire period of your connection with the company?

A. Yes, it does.

27163 Q. Directing your attention to Commission's Exhibit 1042-E, being a letter from your Richmond office to your Allentown office, and, in which it said:

"Ignore request in today's mail and quote you as shipping Port Norfolk 1500 barrels 10 cents up Stop Norfolk dealers have handled with other manufacturers and all agree to do likewise."

Do you say in view of that telegram that you had no agreement or understanding with dealers or with other manufacturers with regard to price on that matter?

A. Yes, I do. That particular transaction was handled as I have explained yesterday, on the basis of our statement to dealers on March 16, 1931, as to what our practice would be, and on that particular transaction which, as I have already testified, is the only case of its kind that I know, and that I have, that I think ever did happen here.

I would like to say that that was simply a case in which our desire to get the better of our competitors got the better of our own good judgment. That was just plain dumb.

Q. Well, do you mean that you attempted to get the better of your competitors by handling an agreement with them to bid 10 cents up in Norfolk on that occasion?

A. Tried to get the better of them by improving our position with the Norfolk dealers.

Q. And bid 10 cents up as the manufacturers
27164 who did bid; is that right?

A. To bid the price that the Norfolk dealers were quoting in their market.

Q. But you had the word from your own representative that the dealers had handled with the other manufacturers, and all of them had agreed to bid 10 cents up, didn't you, and you went ahead and bid 10 cents up?

A. That is right.

Q. Now, for a moment, I want to direct your attention to a matter that we went over yesterday without having our minds meet on the proposition.

Now, on page 27089, under my questions, you said that the effect of this so-called equalization clause was not to permit each bidder to make his delivered price as low as other bidders, and you gave several reasons why that was not so, the first half of the page, or practically the whole page. How did you reconcile that with your testimoney on direct examination on page 27080, lines 9 and 10, where you said that under this equalization clause "each bidder is given an opportunity to equalize his bid," and etcetera, and so on?

Mr. Leisure: What was that page, Mr. Wooden?

Mr. Wooden: 27080, lines 9 and 10, and 27089.

A. Mr. Wooden, I stated on page 27080 of the record just exactly what I mean. The equalization consisted of
an undertaking to make a further adjustment of
27165 the f.o.b. mill price to the extent by which the differences between the commercial and land-grant rates from the mill of any bidder might exceed the difference between the commercial and land-grant rate from that bidder's mill.

By Mr. Wooden:

Q. How do you reconcile that with the testimony on the other page to which I directed your attention; that the effect of it was not to equalize delivered prices?

Mr. Leisure: 27089, do you mean, when you say the other page, Mr. Wooden?

Mr. Wooden: Yes.

A. Mr. Wooden, the question on page 27089 is whether each bidder agrees to make his delivered price as low as any other bidder. I answered that question in the negative, and that is still the case.

By Mr. Wooden:

Q. I asked you if the effect was not equalized delivered prices?

A. No.

Q. Well, I now ask you whether the effect was not—the equalization clause was not to equalize delivered prices.

A. No, Mr. Wooden. It—

Q. How could they equalize their bids, then?

A. They equalized them to the extent of such equalization as this particular clause tended to operate,
27166 but it by no means necessitated making the cost of the cement of each bidder identical.

Q. As a matter of fact, though, the delivered cost or delivered price bid of each bidder would have been identical, depending upon the extent to which they observed the formula of taking base price plus freight, wouldn't it; using base price plus freight?

A. Mr. Wooden, if each bidder in his bid quoted the same price at destination, then the effect of equalization would be to make the cost of each bidder the same, but where that was not the case, then the equalization clause did not equalize the delivered cost of the cement.

Trial Examiner Norwood: Just tended to equalize one factor.

The Witness: It equalized only one factor; the freight.

By Mr. Wooden:

Q. And assuming the delivered price was the same, to begin with, the equalization kept it on a parity?

A. If the prices quoted originally were the same, the costs of cement would be the same.

Q. That's what you meant when you said "not necessarily?"

A. I had in mind the bids made by competitors with the use of the equalization clauses, and there were a considerable number of them which did not result in
27167 identical cost to the Government at destination.

Q. You mean that the delivered prices bid were not identical in the first instance?

A. Right.

27173 Q. Is your testimony to the effect that Lehigh never had any agreement or understanding with competitors about the use of basing points apply to your use of the Irving mill as a basing point?

A. Yes, sir.

27174 I direct your attention in that connection to a portion of Commission's Exhibit 3209-A, which is a letter from Clark M. Moore, of the Colorado Portland Cement Company, to sales manager of the Three Forks Company, and in which he says, after instructing him to use Irving as a basing point, and giving him the base price, he says, "You need have no fear whatever of the Lehigh people taking any business except on this basis as their Chicago office is now in complete charge of their Spokane factory, and will be responsible for every action of every one of their employees, and you may rest assured that Mr. Brown, as well as all others, understands this perfectly. Mr. Gauen gave me his personal guarantee of this, and I, in turn, gave him my guarantee of this strict adherence to this."

Do you still say there was no agreement or understanding between the Lehigh Company and any of its competitors?

A. Yes, I do. I do not know anything about what Mr. Gauen may or may not have told anyone, but I do not hesitate to say that from the first of January, 1913, it was the Lehigh Company's definite policy that under no circumstances would it sell a barrel of its cement at any other than its published quotations, whatever they might have been.

Q. Well, this was the published quotation and the base of another company, the International.

27175 A. If, as we were at that time operating at Metaline Falls, a new basing mill, making our prices such that we met the prices issued by another mill, they, nevertheless, were our published prices, and they were the prices we observed.

Q. Well, you don't publish the base prices of other mills, do you?

A. We publish only destination prices.

Q. Based upon the base prices of other mills; is that right?

A. At the present time we operate all mills as basing points.

Q. Yes, but you sell, also, in the territory of other base mills, do you not, and recognize the base-point price in that territory?

A. Where we sell in the territory of other mills we meet the destination prices as we find them.

Q. What has become of this Mr. Gauen who was in your Chicago office?

A. Mr. Gauen left the Lehigh Company, as I recall it, in 1921. He thereafter engaged in several lines of business having no connection with cement, and then, some years ago, moved to London where he organized a cement company. When I last heard of him he was living in London, England.

27177 Great Lakes never marketed any of its own output before Lehigh took a stock interest in it. Lehigh took the stock interest before the plant was completed; before it began shipping.

27183 Q. Were they figured on the Union-bridge basis?

A. If my recollection is correct, and I think it is, the prices that we found were only in Baltimore, or in a very few points around Baltimore, and they were hardly enough prices to enable us to conclude whether or not they indicated a Union-bridge base.

27186 Q. You testified with regard to this field information that you get recording destination prices of competitors, and you check up 50 destinations. Was that figure just an illustration of your method, or was it intended to be a statement of the number of checks you made?

A. It was intended to be a general statement as to the method.

Q. As a matter of fact, in some cases you might

27187 be satisfied with checking up a very much smaller number than 50, wouldn't you?

A. It might be that a smaller number than fifty would sufficiently reveal a particular situation, although I would say that in most cases, or cases of price movement involving any particular territory, any large extent of territory, we have many more individual cases than that.

Q. Than that, meaning what?

A. Fifty.

Q. A larger number?

A. Yes.

Q. That depends, I suppose, taking your entire territory into consideration?

A. No. I am speaking about the result of a change made by a particular mill involving the use of the base figure at that mill.

Q. Well, the mills that you were accustomed to recognize as base mills, from long observation, how many field reports do you consider necessary to determine whether such a base mill has changed its base price?

A. Oh, I don't think that we have any hard and fast requirement. We want enough information to make us feel sure that such a change has taken place, and that it apparently is as represented to us by our field force.

27188 Q. Well, I am trying to get at how many such reports, field reports, do you need in the case of a basing-point mill?

A. There is no fixed number.

Let me say, for example, our Pittsburgh office should find quotations in the field from the Universal-Atlas Company at Pittsburgh. Well, our Pittsburgh office would develop that information from its salesmen from early in the morning in which those quotations are in the field. The Pittsburgh office would hear from its six or eight salesmen who in the territory would be affected by the change or the report from each of those six or eight salesmen might represent contacts that the salesmen had made with perhaps six dealers. He reports that information to Pittsburgh. Pittsburgh gets its conception of the situation and reports it to us at Allentown. Now, that same change in price may perhaps affect portions of the territory covered by our Buffalo office. By the time we hear from the Pittsburgh man we probably have also heard from the Buffalo man. Now, our judgment of those situations is a composite of all the information those men have collected, and our action also takes into consideration the general reliability of the man that is reporting it, where we have our own ideas as to the degree of accuracy or dependability of the information received from the various members of our organization, and when, in our judgment, that information shows a picture, then we decide what we are going to do.

27189 Q. I understood you to testify regarding your distributors in the old days, that they could not meet competition and came to you for special prices to meet competition; is that correct?

A. That is generally correct.

Q. Whose competition was it that they could not meet?

A. The competition they experienced in their respective fields. In some cases competition from other manufacturers; in other cases, competition from distributors representing other manufacturers.

Q. In other words, they were competing with some manufacturers who sold direct and who did not have distributors; is that correct?

A. That is right.

27190 Q. Had not Lehigh Company also been quoting delivered prices to distributors prior to 1911?

A. Oh, yes. I testified that towards the end of the period of 1911 there were increasing number of cases in which the Lehigh Company gave to distributors special prices to meet the competition at destination, and that frequently those were f.o.b. destination prices.

27192 Q. Can you name any customers who informed you that they preferred delivered prices to f.o.b. mill prices?

A. For what period of time, Mr. Wooden?

Q. Any period of time.

A. Yes, I can name customers with whom I had conversed, that expressed such opinion.

Q. Will you do so? I will modify my question to make it: Can you name any customers that have requested delivered prices rather than f.o.b. mill prices?

A. Oh, surely. The enumeration of those would be an enumeration of our daily business, almost, because we receive each day perhaps forty or fifty inquiries from customers. They all ask for prices f.o.b. destination.

27193 A. There wasn't any particular time at which we made a decision to quote f.o.b. destination prices rather than f.o.b. mill prices. It was a practice that came into operation gradually, and, as I have already testified, in the course of terminating our distributor arrangements we found a great many instances in which the distributors were making their sales at f.o.b. destination prices even though our sales to them had been at f.o.b. mill prices.

27194 Now, in such cases we merely continued to do direct to the dealers what the distributors had done before; that is, quote them delivered prices. We had no particular conversations with them about the method. However,

By Mr. Wooden:

Q. Did you have any requests from other dealers at that time, during that period, expressing a desire for delivered prices in preference to f.o.b. mill prices?

A. If you mean by that, Mr. Wooden, if we had any number of cases in which dealers said, "Please don't quote us f.o.b. prices. Please quote us destination prices instead."

I don't recall we had any of that character, but I had many conversations between 1912 and 1914 with dealers as to our method of quoting.

Q. In those conversations didn't you suggest to the dealers and outline to them the advantages of delivered prices?

A. I question whether the advantages of delivered prices were discussed.

Q. And you discussed them as you saw them, as well?

A. Oh, surely.

Q. Can you name any dealer at any time that, without prior discussion or suggestion from you, expressed a preference for delivered prices rather than f.o.b. mill prices?

A. Mr. Wooden, as I said a moment ago, if you mean by that did any dealer write us and say, "You have,
2719⅝ until now, been quoting us f.o.b. mill prices. Won't you please, in the future, quote us destination prices?" No, I recall no such request.

Q. Do you recall any oral requests of that sort?

A. What I recall very definitely: It was a gradual development of our practice of quoting destination prices, and a ready acceptance of that method by our trade as representing the realities of the situation.

Q. Can you name any customer who made a request for delivered prices rather than f.o.b. mill prices, whether he made it in writing or orally?

A. Well, I will recite several typical conversations, if you want me to.

Q. I want the names.

A. Yes. I recall about 1912 or 1913, shortly after the Lehigh Company discontinued its distributor connections in New York City, having a talk with one of the members of the firm of Candee, Smith & Howland. We were quoting delivered price to the dealers in New York City, and

Q. Was that after you began quoting delivered prices?

A. Oh, yes, because among the things which we discussed was the fact that Hiram Snyder & Company, our distributors for New York City, had for many years been selling that dealer cement at delivered prices, and we discussed the whole general subject, and the dealer ex-
27196 pressed the opinion that he didn't see how a dealer in New York City could possibly operate, except on the basis of delivered prices.

Q. Was that because of difficulties in the New York City dealers competing among themselves?

A. No, because what that dealer wanted was about, as far as I know, what every other dealer wants, and that is to be able to buy his material on a basis of definitely known costs to him.

Q. And equal cost with other dealers in his competitive area?

A. Well, at least as low cost, each and every one of them would like to have it lower.

Q. As a matter of fact, unless sales were made at delivered prices some dealer might buy f.o.b. nearby mill and undersell dealers who might want to buy at more distant mills, wouldn't they?

A. Not at all, because if that should happen you would have exactly what did happen during the days of our selling through distributors, an immediate effort to meet that competition through making whatever prices, either f.o.b. mill or f.o.b. destination might be necessary to meet it.

Q. In other words, it created an unstable condition of prices, didn't it?

A. No.

Q. Weren't your distributors having trouble
27197 meeting competition, and came to you for special prices because of competition of other manufacturers and other distributors?

A. Oh, yes, but that is—I consider that just a part of the competitive situation that has existed from then until now.

Q. Can you name any individual connected with that New York firm that you had the conversation with?

A. Mr. Francis Holland.

Q. Is he still living?

A. No, I am sorry to say he is not.

Q. I am still trying to get you to name some distributors,—I mean, some dealers, who requested you to sell on a delivered basis rather than f.o.b. mill.

A. Well, Mr. Wooden, I have answered that; if you mean by that any specific request from dealers asking us to please quote them f.o.b. destination instead of f.o.b. mill, I recall none.

Q. Did you have any representations from any dealers' associations expressing a preference for delivered prices rather than f.o.b. mill prices?

A. No, I know of none.

27202 Q. You testified, I believe, that your salesmen use The Cement Institute freight rate books to figure destination prices. How can they do that without knowing what the base price is to add to the freight?

A. Well, I testified that our salesmen may have occasion, in a minority of instances, to figure prices. I have described the method that we used to figure those prices, and I have also said that we do supply to our branch offices, and they do, in turn, supply the salesmen with the information as to the basis and base figures applying to their territories, but since that information is merely what the salesman, himself, has ascertained in the field, he really has the information before we have it.

Q. And he really doesn't need what you furnish him; is that what you mean?

A. He merely needs our authority to make the prices in accordance with the information that he has developed. He can readily ascertain the situation, but without our authority he can't do anything about it; without instructions.

Q. Now, as I understand it, you obtained all this 27203 information on this Respondents' Exhibit 1109 through salesmen picking it up in the field?

A. Salesmen, district offices, and our contact with the field.

Q. Will you tell me, in view of that, how and where you got the information shown on this list, Respondents' Exhibit 1109-B, of a price of $1.45, Wyandott, Mich., and applying only to the State of Michigan?

A. I got that information from Mr. Rader, of our Chicago office.

Q. You don't know how he got it?

A. I think I do.

Q. He didn't get it by picking it up in the field in Michigan where you have no—

A. Yes, indeed, he did, because he sells high early strength cement in the State of Michigan. He sells that high early strength cement at prices quoted by Michigan manufacturers.

We find that there is a direct relationship between high early strength and normal cement prices, and he would naturally develop that information.

Q. How did you know that the Wyandott, Mich., price applied only to the State of Michigan?

A. Because if the Wyandott, the base of the Wyandott base figures, were used outside of the State of Michigan, I would expect to find prices in Ohio that reflect that base figure.

27204 Trial Examiner Norwood: Well, do you know that those prices were generally confined to the State of Michigan?

The Witness: By analysis of the Huron Company's prices in the State of Ohio, I do not find that they reflect a Wyandott price.

By Mr. Wooden:

Q. Well, how did you know that in the State of Michigan they would reflect it at every point in Michigan and not immediately outside? You say your high early strength connections there were sufficient for that purpose?

A. I would think so; yes, sir.

Q. How many high-early-strength customers do you have in Michigan?

A. I don't know, Mr. Wooden. That is Mr. Rader's territory, and I know that he has some quite substantial accounts.

Q. How do you know from field information what the price in Wayne County and Oakland and McComb Counties is, a special price for those counties?

A. Similarly, from Mr. Rader, and he would—

Q. I know, but you don't know how he got them.

A. I say I think I know. You asked me before.

Q. The same explanation as before?

A. He has a couple of good high early accounts in Detroit.

Q. Is that Wayne County?

A. Yes, sir.

27205 Q. And Oakland and McComb Counties are what? Are they adjoining counties?

A. I presume so. I don't know.

Q. Is it your idea that your high early strength information from high early strength accounts in Michigan are sufficient to enable you to determine that a certain price is effective on standard Portland cement right up to county lines, and then not effective over that county line?

A. Yes. I wouldn't think that would be difficult.

Q. Do you sell in competition with the El Paso, Texas, mill?

A. Yes, sir.

Q. Where?

A. Portions of Texas and New Mexico.

Q. On standard cement?

A. Yes, sir; standard and high early.

Q. Do you sell in Upper Michigan?

A. No; we don't sell normal cement in Upper Michigan, or, if we do, it is a very limited extent.

Q. Do you have any high early strength accounts in Upper Michigan?

A. I can't answer that definitely, not knowing all of the high early strength accounts in that State.

Q. Can you tell me, then, how you got the information shown on Respondents' Exhibit 1109-C that the $1.75 price at Milwaukee was applicable only in Wisconsin and Upper Michigan?

27206 A. Well, we received it for our records at Allentown from Mr. Rader, at our Chicago office.

Q. Do you have any accounts in the City of Seattle, Wash.?

A. No, I don't think so.

Q. Do you have any salesmen calling on the trade there?

A. Yes, our district sales manager at Spokane has frequent occasion to go to Seattle to follow contractors there.

Q. But you haven't any accounts there?

A. We have customers in Seattle that we sell when they have work outside of Seattle. We don't sell cement in Seattle.

Q. Can you tell me, then, where you got the information on Respondents' Exhibit 1109-D, showing a price of $2.40 applicable only to the City of Seattle?

A. We received it from Mr. Rader at Chicago, and he,

in turn, received it from his district manager at Spokane.

Q. How do you know that? How do you know where he received it?

A. I will amend the answer: That I have no doubt that he received it from him.

Q. Did you have any accounts in Portland, Ore.?

A. No. I don't think we sell cement in Portland. We have accounts in Portland for whom we sell for work outside.

Q. Just as in the case of Seattle?

A. Just as in the case of Seattle.

Q. Can you tell me where you got the infor-
27207 mation on this exhibit showing a price applicable in Portland, Ore.?

27207 A. We received it from Mr. Rader, of Chicago, and I have no doubt he received it from his district salesmanager at Spokane.

Q. But you don't know where he got it?

A. No.

Q. Do you have any accounts in western Oregon as distinguished from Portland?

A. I am not sure, Mr. Wooden, what the divisions between western and eastern Oregon may be, and don't know whether any of the accounts we sell would be in the western part of the State.

Q. Do you have some accounts in eastern Oregon?

A. We have some accounts in Oregon, and I would think that more of them would be in the eastern part than in the west.

Q. Do you know how and where the information came from on this list showing a different price for Lime, Ore., east, and Lime, Ore., west?

A. We received the information from Mr. Rader in Chicago, and I have no doubt that he got it from Mr. Perrow, the district sales manager at Spokane.

Q. But you don't know that Mr. Rader got it that way?

A. No, I don't know, but I would say with respect to any territory such as Michigan, in which I might be interested in the price information, if I send a salesman
27208 into that State and he couldn't in one day's time develop the price situation for me, I would want to get another salesman.

Q. Yes; that is the "if"; if you sent him. But there are some localities that you apparently don't solicit and yet you have the information.

A. I have already said, as far as Michigan is concerned, we do solicit high-early strength business. That does not involve having a salesman regularly assigned to the territory. It does involve covering the territory to a sufficient extent to get us the business, and it does involve having a knowledge of the market conditions.

Q. Do you have any accounts or solicit any business in Bellingham, Wash.?

A. No, we have no accounts in Bellingham, Wash., but the figure that is shown there is the Bellingham base figure, and it is my very distinct recollection that some of the figures at which we sell in the central part of Washington do reflect that base figure.

Q. Do some of the prices in central Washington reflect a Seattle base figure?

A. Yes, I think they do.

Q. Do you mean to say, with reference to Respondents' Exhibit 1109-A, where a different base price is shown for Ironton, Ohio, one price applying to West Virginia and Virginia, and the other to North Carolina and South,
27209 that you have information from every point along the border line of those States which shows that there is a different base price applicable in those States?

A. Mr. Wooden, again, I will take it that you are using base price in the sense that I am using base figures—

Q. Yes.

A. —and my answer to your question is: Surely, we have the information as to the situation on both sides of the line. It is the only source of information that we have.

Q. Do you have it at every point along the borders of those States?

A. To whatever extent those points along the border are steady markets for cement, and are included in the list of points for which we are making locations.

Q. Unless you had it for every point along the border, how could you tell it was a price that stopped at the State line, and a different price over the State line?

A. Mr. Wooden, I have no way of knowing whether the Alpha Company at Ironton, Ohio, is using a 10-cent lower price than they are quoting. I am only interested in the price they are quoting.

Q. How would you deduce from the points they are making quotations that one of their prices applied to West Virginia and Virginia, and another applied to North Carolina?

A. By taking the quotations in those two territo-
27210 ries, deducting the freight and finding as to the different territories they indicated different base figures.

Q. What about New Castle, which appears on this exhibit as a base point? When did that become such?

A. I don't recall the exact date, Mr. Wooden, but within the past year.

Q. Is that a base in the same sense that your mill, say, at La Salle, is a base?

A. Surely.

Q. In other words, it is a base for all purposes?

A. Surely.

Q. What territory is controlled by it?

A. It controls a portion of territory in western Pennsylvania and, as I recall it, runs into the eastern part of Ohio, and, I think, a few points in New York State.

Q. Is it included in the freight rate books of The Cement Institute as a shipping point?

A. I don't know.

Q. What territory does your Fordwich, Va., mill base control?

A. A portion of Virginia and, I think, a portion of West Virginia.

Q. Have you ever heard in the industry such an expression as a "nominal base"?

A. No, I can't say that I have.

27211 Q. You don't know what a nominal base is?

A. Putting an interpretation of the word, I would think that it meant something that is called a base, but isn't.

Q. You don't know of any points in the industry where that would be true?

A. Well, what you mean—there are some bases on which the base figures are such that they do not affect prices in a very widespread territory.

Q. Well, is your New Castle mill in that category?

A. Well, New Castle, I think, is in that category, for a very simple reason: New Castle at one time was a very excellent plant location. It shipped into a wide territory, but when new plants were built at Pittsburgh, and Butler, and Buffalo, Zanesville, Ohio, and other plants which completely surrounded the New Castle plant, its marketing territory was gradually restricted, and a location which at

one time was a very excellent one for the Lehigh Company is today a very poor one.

Q. My question was whether any of your mills fall into that category of a base that affects only a small territory?

A. And I have said that New Castle does fall into that category because of its close proximity to other mills which are also basing points and which are gradually but steadily choking that mill to death.

27220 By Mr. Wooden:

Q. Mr. Bowen, do you participate with other officials of your company in deciding what base price figures your company will establish?

A. Yes, I participate, as far as I know, in all decisions about prices.

Q. Who else participates?

A. Matters having to do with the eastern and southern territories, Mr. Young and Mr. Swett, and matters having to do with the western territory, ordinarily Mr. Young and Mr. Rader, although where either Mr. Rader or Mr. Swett is available, they participate in all such discussions irrespective of territory.

Q. How do you go about arriving at the base figures that your company establishes?

A. Well, in every case where consideration ranges over all the facts and conditions existing in the territory affected; we talk about possible changes whenever, in the judgment of anyone, such a change would be desir-
27221 able. We discuss it thoroughly. Sometimes we make the changes and sometimes our decision is to make no change at that particular time.

Q. Well, assume that you have a certain base price figure in effect at your mills at a given time. How do you determine whether or not that figure should be continued?

A. Well, by giving consideration to the nature of the competition existing in the territory; to the question of whether we are making any money or losing money, and with regard to a number of general conditions which I endeavored to state in my direct examination, which are the underlying fundamentals. That is, we want a price that will give us the best possible return in the face of competition, and our desire to get a price at which our product will sell.

Q. Do you arrive at your base prices by building up

your costs and adding a certain amount for profit above cost?

A. Oh, no.

Q. Well, is the competition situation the primary or dominating consideration in the level at which you will fix your base price figures?

A. I would say it was one of the primary factors, Mr. Wooden, although in any situation which involves judgment, and which, from time to time takes into account a great many different factors, it is rather difficult to say that one outweighs the other.

Q. Can you name any other that equals it in importance?

27222 A. As a matter of judgment, I don't know that I ever tried to rank the factors in importance, and I don't know that I am able—all other factors taken into consideration, it certainly is competition which finally determines whether a given change in price is practicable.

Q. Or whether the maintenance of an existing base figure is practicable?

A. Oh, yes.

Q. Are you not guided by the same consideration with regard to increasing your base price if other base prices permit, that you are in increasing destination prices when destination prices of competitors will permit?

A. I am not sure that I understand that question, Mr. Wooden.

I will say this: That if in our judgment conditions in the territories in which we operate are such that an advance in our prices is desirable, we advance those prices.

By Mr. Wooden:

Q. And don't you advance your base prices when other base price advances permit you to do so?

27223 A. We advance prices figured on our mills, and whenever we make an advance, sometimes that is done in periods when in neighboring territories competitors have advanced their prices. That would be a factor that would enter into our consideration.

Q. Well, you mean when competitors advance their base prices?

A. I am referring to their prices in the field.

Q. But don't those reflect advances in their base prices?

A. They reflect an advance in their base figures, surely.

Q. If you didn't put your base prices upward when other adjoining base prices went up, you would be enlarging your territory at the expense of the other base mill, wouldn't you?

A. Not enlarging the territory in which we sell. Of course, we would enlarge the territory in which our prices would be figured in our own base figure.

Q. That's what I meant.

A. And that has frequently happened.

Q. Doesn't that happen in periods of price uncertainty or price disturbance rather than at any other time?

A. It happens from time to time most all periods. It depends entirely,—and naturally any period where prices are changing more frequently the chances of that condition developing are increased.

Q. Given a base price that remained unchanged for a year or more and a freight rate that remained unchanged for a year or more, the territory in which the base
27224 price was effected would remain constant, wouldn't it?

A. What you are saying is that if the prices are not changed over a year's period they are constant; that is true.

Q. Can you name some mills that have been basing points that became non-basing-point mills?

A. Yes, I think I can. If my memory is correct, I think that the plant at Kingsport, Tenn., functioned at one time as a basing-point mill. Then for a time the quotations indicated that it was a non-basing-point mill. Then later on again it was again quoted as a basing-point mill.

Q. And has remained as such?

A. Yes, sir.

Q. Are there any other cases of that sort?

A. Well, the plants at East Fultonham and Osborne, Ohio, would seem to me to be in the same category. I recall a time when the plant at Howe's Cave, New York, quoted prices that indicated the use of that plant as a basing point, and then later on discontinued quoting in that way.

27225 Q. Can you tell me whether Cape Girardeaux is now a basing point or not?

A. Yes, it is.

Q. Did you have some information from the field among the exhibits that you identified indicating that Cape

Girardeaux was no longer a base for quotations in some territory?

A. I do not recall the particular instance, Mr. Wooden, but that might well be with respect to a given territory.

Q. But you think it is still a base?

A. That is my recollection, if I—yes, I am sure it is.

Q. You testified about the existence of many secret departures from announced prices. How do you know that there are departures that are secret?

A. Well, they—the prices might perhaps better be defined as prices which the maker hopes will be secret, but the man who receives the price does not maintain the secrecy.

Q. Do you mean that the beneficiary of a secret price is going to tell someone else about it?

A. Surely.

Q. In an effort to get a similar advantageous price from a competitor?

A. In an effort to get a similar or even better, if he can, or in a great many cases in order to explain to a seller with whom the buyer is particularly friendly why he is unable to give his friend the business.

27226 Q. Don't you also have the experience of having much misinformation come to you of that sort?

A. Oh, yes.

Q. In other words, it is to the interest of the buyer to claim that he has a secret low price, isn't it, whether it is true or not?

A. Oh, yes, no question about that; and I try to distinguish to the best of my ability between what is fact or likely to be fact, and what is more likely to be an effort on the part of the buyer to mislead the seller.

Q. Isn't it frequently extremely difficult to get any satisfactory conclusive evidence on the point?

A. Yes, it is frequently particularly difficult to get the information with definiteness before the order is placed; frequently the fact can only become known after an order has been placed.

Q. What steps do you take to verify reports of that kind that come to you about a secret low price?

A. It depends upon our cultivation of the buyer, and our friendship with him, where that exists, to develop the fact of the situation.

Q. Do you salesmen ever verify it by inquiry of competing salesmen?

A. I do not think so. I would think that would be an extremely unreliable source of information.

27227 Q. Do you ever seek to verify it by inquiry of the cement manufacturer that is alleged to have made secret low prices?

A. No, and I would not consider that a particularly reliable source of information.

Q. Have you ever made inquiry of competitors in such situations, get their statement on it?

A. No.

Q. Do you say that for your company generally and all its officials and employees, or is it just for yourself?

A. I say it for myself, and I say so far as I know and to the best of my belief, it is equally true of any of the other officers of our company.

Q. Have you put out any instructions on it?

A. As to the officers of our company, I do not think any formal instructions would be required. We know the basis of our operation.

Q. All I want to know is whether you put them out, any instructions.

A. We issued no formal or written instructions to our sales organization, but I can say that I have frequently, personally, at sales meetings, made it very clear, to the members of our organization that we did not desire them to make such inquiries or to follow such a practice.

Q. Now, you have spoken of competitors sometimes departing from their published prices. What did you
27228 mean by their published prices?

A. Well, all I mean is that if a competitor issues written computations to the buyers in a certain market stating that his price is a certain figure, and, if, in fact, I find that he is actually making sales in that market at lower figures, that is what I mean by secret departure from the manufacturer's published prices.

Q. In other words, you consider a price published as soon as a quotation is made to a buyer?

A. Yes, I would say that written quotations to a buyer, I call publishing the price.

Q. Was this blanket railroad freight rate from Lehigh

Valley points to distant points in effect when you went with the Lehigh Company in 1911?

A. Yes, it was.

Q. Was the blanket rate out of the Kansas Gas Belt in effect at the time you went with the company?

A. I don't know, Mr. Wooden. We purchased that Iola plant in 1916, as I recall it, and, I believe that the rates were blanketed at that time.

27229 Q. You don't have any recollection of the circumstances under which they were blanketed at the time you were with the company, or while you were with the company?

A. No. I think it is a very natural situation, however.

Q. Now, referring to Respondents' Exhibits 1110 and 1111. Were not some of the changes in destination prices, shown on those cards, the results of changes in freight rates (handing documents to witness)?

A. Yes, I would say they were.

Q. Can you tell me whether the figures shown on these two exhibits, 1110 and 1111, in the column headed "Net" are mill nets out of those particular prices?

A. You mean the third column?

Q. Yes, the third printed column headed "Net."

A. No, Mr. Wooden. The prices in that third column are prices which we quoted on a new mortar cement which we began marketing in this territory early in 1938, and simply because this third column appeared on the card and was not being used, we used it as a place to record the mortar cement prices.

Q. Are the letters "H," which appear opposite some of the prices listed on 1110-A, is that an abbreviation for Hudson or Hudson Valley?

A. Yes, that is right.

Q. And on 1111 are the letters "ARB" appearing after some of the prices listed, is that an abbreviation for "Arbitrary"?

27230 A. Yes, that's right.

Q. Do these white card inserts, marked 1111-C and 1110-C, do the entries on those cards show the amount purchased at various dates?

A. Yes. The white card is a card that is made up each year, and which affords space for listing shipments as they are made. The buff color is a running card.

Q. On these white-card shipments, the figure "132" appears. That is the normal carload or usual carload, isn't it?

A. No, it is the minimum carload.

Q. 132 pounds; is that right.

A. 132 is the minimum car.

Q. What is the purpose of having shown on these cards the basing point, if the destination price is the only information picked up in the field; if that is the only information you have picked up in the field?

A. Well, it is purely a matter of convenience on the part of the several clerks that handle these cards. They use their own discretion.

The only purpose of the card is to serve—The only purpose of the card is, in that respect, to serve as a record of the quotations we issue. Sometimes the clerks who handle them find it of convenience to indicate on the cards that the price does bear a relationship to the base figure rather than being one of the many kinds of prices
27231 that don't bear such a relationship.

Q. And when they don't bear such a relationship they put the abbreviation for "arbitrary" on, don't they?

A. Sometimes, and sometimes not. It doesn't matter, as far as I am concerned, what they put on, as long as they quote our prices properly and record them properly.

Q. Was it your testimony that your Lehigh Company has always sold direct to the United States Government?

A. No, Mr. Wooden, I think the question that I dealt with was developed of our marketing policies through the dealers' discount, dealer service payment plan, plans of that sort, and I think the question was as to how we sold the United States Government, and I think I said that the United States Government, State Governments, and railroads were considered in a class by themselves, and we gave them the same discounts as dealers.

Q. Isn't it a fact that the Lehigh Company, for a great many years, covering the entire period of your connection with the company, did sell direct to the United States Government and State Governments?

A. Yes. Most of my experience, to several departments of the United States Government, we gave direct quotations.

Q. And haven't you continued to do that with reference

to the regular departments of the Government, in their purchases?

A. Yes, Mr. Wooden, we have done so, but have
27232 not done so in the case of the various emergency reliefs, which was as covered by our statement of policy in 1935.

Q. In what respects did Article XI of the Code, N. R. A. Code, differ from the policy that had been followed up to that time by the Lehigh Company?

A. Its operation didn't affect any very great or material change in our practices prior to the adoption of the Code. We had in the several territories in which we did business patterned our practices with respect to direct sales, upon those of our competitors operating under the order of March 16, 1931, which I have mentioned a number of times.

Now, the fact is, that over the country as a whole, although during the year of 1931 or 1932, and under the competition, fairly general practices had been hammered into existence with respect to direct selling. There was some slight variation the country over.

In some portions of the country direct selling was general to a somewhat greater extent than Article XI. In other portions it might have been less.

Q. Was that true in the same period with regard to the Lehigh Company, that you had different degrees and amounts of your selling in some of your territories than in others?

A. Prior to the adoption of the Code, as I say, there were some differences, although not great.

Q. Were those differences dependent in some
27233 degree in regard to the wishes of dealers in the respective territories?

A. I would say that that entered into the picture to some extent; where competitors didn't sell direct to as general an extent, it is quite possible that they did so because they wanted to be in better standing with the dealers in those localities, and, of course, we followed what they did; put the burden on them.

Q. Isn't it a fact that dealers' associations in different sections of the country sought to have different standards recognized in their particular territory?

A. Oh, undoubtedly, I think they were seeking, and, in my estimation a dealer association at that time, most

of them were speking an ideal of having all cement sold through the dealer.

Q. You did not intend to testify at any time, did you, at one time all cement was sold through dealers?

A. No, I did not intend so to testify, and do not think I did. I think I said that even around 1911 or 1912 we sold some cement direct to contractors as well as to the Government.

Q. Now, this Article XI of the Code made an end of these variations in the amount and extent of direct selling that had existed prior to that time?

A. Yes, it was designed to.

Q. To what extent did that Article XI of the N. R. A. Code differ from the April, 1935, announcements of
27234 the Lehigh company?

A. I don't believe I could answer that, Mr. Wooden, without having both of them before me.

Q. Don't you have any recollection on the subject?

A. Well, I know that the April, 1935, policy of the Lehigh Company was intended to state a policy which represented to a considerable extent the sales practice that had been hammered out in competition, but to the extent that Article XI did the same thing I would say that the sales policies of the Lehigh Company, of 1935, having been prepared with the idea of setting down in a definite way what had become somewhat general would have been somewhat similar.

Q. You mean nothing stands out in your mind as to what the extent or nature of the difference was between Article XI and your April, 1935, policy announcement?

A. No, not at the moment.

Q. You are inclined to believe that they are quite similar?

A. I think that they varied in some respects, but, as I say, just to detail each one of those differences, I am not able to do it at this time.

Q. Between the February and April, 1935, announcements of the Lehigh Company on selling policy, you say you received suggestions and criticisms from dealers?

A. Oh, yes, suggestions and comments and criticisms.

Q. Can you name any parties from whom you
27235 received such suggestions and criticisms?

A. Mr. Wooden, we received them from practically every dealer with whom we did business. As soon

as we sent out the February policy our salesmen went out, called on every dealer on our lists, and the dealers' reactions were reported back to us in full. We had thousands of them; praises, suggestions, criticisms.

Q. You had some suggestions and criticisms, didn't you, from dealers' associations?

A. Oh, I think we did, although 1935 in the eastern and southern territories which I had direct contact with the dealers, dealers' associations were hardly effective. A great many of them that had existed had gone out of existence.

Q. Well, you had contacts, didn't you, criticisms from dealers' associations in the northeastern part of the country?

A. It may be so, but I do not remember any of them at the moment. If I did have, they did not register particularly.

Q. What was the nature of the criticisms and suggestions that came to you from dealers between February and April, 1935?

A. Well, if I were to attempt to summarize them I would say it would be about like this: Between 80 and 90 percent of the dealers who were quite in accord with our statement of policy, who approved it, thought it was a great thing; then there were probably one or two percent of the dealers who denounced it roundly, and 27236 whose only idea of an acceptable sales policy would be one that sold everything through the dealer up to and including the United States Government; and then there was a goodly percentage of people who while approving the policy in general and praising it, praising us for undertaking it, offered suggestions of various kinds. A great many of them thought that there should be a change in respect to selling through dealers on jobs that were at least partly, I mean road jobs that were partly within the city. As I recall it, our policy provided that unless a road job was entirely within the limits of a city, we would sell it direct. I had a good many dealers suggest to me that that was not entirely fair, that if we were to—say, a job was located 50 percent, 50 percent for the city, it should be sold direct; suggestions of that kind.

One of the frequent suggestions that I received from a good many dealers had to do with bridge jobs, that in practice they were ordinarily—

Trial Examiner Norwood: I do not think that is an answer to that question.

The Witness: Beg pardon?

By Mr. Wooden:

Q. Can you tell me, Mr. Bowen, when the Lehigh Company began the policy of selling through dealers for railroads which did not file their tariffs with the Interstate Commerce Commission?

27237 Q. Just tell us, Mr. Bowen, then, whether Lehigh has had that policy of selling railroads through dealers when the railroads did not file their tariffs with the Interstate Commerce Commission?

A. Yes, generally speaking, that has been our policy ever since we had a policy.

Q. In other words, you sold some railroads direct, and that particular type of railroad you sold through the dealer; is that right?

27238 A. Yes, and I would like to explain that. What I mean by that type of railroad is frequently small railroads, owned by some industry or manufacturing concern, or in some cases electric lines operating wholly within a city—in other words, the basis of our policy was that if I was unwilling to sell a manufacturing concern direct I would not take the device of their ownership of a railroad to enable them to get direct quotations.

Q. Do you say that your February, 1935, announcement including such railroads as business that should go to the dealer, through the dealer?

A. Well, I do not recall at the moment, Mr. Wooden, whether February, 1935, policy said so.

May I see it, please?

Q. I do not know if I can put my hands on it; do not have it readily available.

A. All right. If it did not, and if that is one of the differences between the February and April policy, then it means in the April policy we were trying to remedy something that should have been included in the February policy.

Q. And which had been your policy for years before on it?

A. Which had been our policy for years to 1931, when we had no policy.

Q. Do you say here in your April, 1935, announcement

you included the definition of a regular legitimate
27239 dealer whereas you did not include it in February?

A. Yes, one of the suggestions was made to us by a good many dealers during the period between February and April, that the absence of a definition cast a little bit of a shadow of doubt upon the good faith of our policy. Some dealers said to us, "You have a very nice policy to protect dealers, but who and what is a dealer?"

We thought that was a valid suggestion, and incorporated it in the April policy.

Q. And following that the dealers' associations took steps to furnish you with lists, didn't they, of parties that they considered to be dealers under the terms of the definition?

A. Mr. Wooden, after our April policy was in the field I recall quite definitely that a number of dealer associations sent us lists of what they considered to be recognized dealers and the suggestion that they were the ones to whom our policy should extend, but I can assure you we paid not the least attention to any of them.

Q. You were in accord with your dealer customers as to what constituted a regular and legitimate dealer. Do you mean to say that you were not in accord with them as to who came within the terms of that definition?

A. I was not interested in anything which gave anyone else the right to decide who was a dealer. I reserved that right to myself.

27240 Q. You testified about this method of marketing cement which was shown to you under Commission's Exhibit No. 547. I am showing you one that is in evidence as Commission's Exhibit 2266-A to F, and which was provided us for the record by your Mr. Rader in Chicago through Mr. Jaques. I wanted to ask you about your testimony where you said that such a paper was shown to you by the Signal Mountain Company in Knoxville, I believe. Was that on the occasion of this meeting of the Southeastern Division that you also referred to?

A. Yes, I think I said it was on that day.

Q. Who was the party with the Signal Mountain Company that showed it to you?

A. As I recall, it was either Mr. Story or Mr. Hjorke, probably the latter.

Q. Will you state the circumstances under which they

brought it to your attention, and describe the conversation that ensued?

A. Well, as I recall the conversations, before the Institute meeting began I was shown a paper similar to that, and asked whether I had seen it. I recognized it as being a re-statement of a Lehigh sales policy which we had adopted, and which I knew that the Signal Mountain Company had also adopted, as a matter of fact.

Q. How did you know that?

A. From finding the notices in the field; as a
27241 matter of fact, some months before that, during the time that Article XI was in the Code, I had been shown a similar tabulation of the provisions of Article XI the same people had prepared, so that the idea was nothing new to me.

Q. What was the purpose of having the announced policy of the Lehigh Company restated in any such form as this?

A. That is what I could not understand. I thought that I had written the Lehigh Company's policy concisely, as clearly, and as definitely as I could. I was not particularly interested in anybody else's restatement of it; certainly it involved no change in my policy.

Q. Wasn't the restatement in that form in order that your sales department might have more convenient and quicker understanding of the policy?

A. In so far as I was concerned, when we put the policy into effect I had called together our district sales managers in the eastern and southern territory, explained to them exactly what our policy was going to be, how it would operate, discussed each and every item of it with them, told them exactly how the policy would operate and what we expected each man to do.

Q. Did you receive a copy of that method of marketing which is in evidence as Commission's Exhibit 2266,—did you receive copies of it from any source?

A. Yes, I think before the time of this Knoxville
27242 meeting, I think I had received a copy of this paper, or one about like it.

Q. From whom?

A. From Mr. Rader at Chicago.

Q. Did you ever have more than one copy of it in your possession?

A. From the one copy that I had in my possession,

after having it for some time, I finally made enough copies to send one each to our district managers in charge of our various offices, simply with the idea that maybe it might be convenient for them.

Q. Whose restatement was this, of the Lehigh policy, that is embodied in this Exhibit 2266?

A. You mean who prepared it?

Q. You said it is a restatement. I am asking you whose restatement it is.

A. I do not know.

Q. You don't know the authorship?

A. No.

Q. The source?

A. No.

Q. Coming back to the conversation with Mr. Story, or Mr. Hjerpe of the Signal Mountain Company: What was that conversation?

A. Well, as I say, I was shown the paper and 27243 asked whether I had seen one, and I said "Yes, I had received a copy of a similar paper from Mr. Rader some time before." My comment was that it seemed to be a restatement of the Lehigh sales policy. That was about the substance of the conversation.

Q. Did either Mr. Story or Mr. Hjerpe say that this matter was coming up at the meeting?

A. No, they didn't say so.

Q. Was it just before the meeting?

A. My recollection is that it was in the hours before the meeting began.

I know that I got into Knoxville that morning about 6 o'clock. I proceeded directly to the Hotel Farragut and had breakfast. When I was there I met a number of cement men who got in town for the meeting and I remember having a conversation with several of them.

Several of them talked about the sales policy that the Lehigh Company had issued several months before. All of them were companies who had sent out announcements following our policy. Several of them suggested that the policy wasn't particularly applicable to the southeastern territory, more because of conditions of the Southeast, more business should be sold direct.

My answer in substance was: "Well, if you think so, why don't you issue a policy of your own and do it?" but none of them wanted to do that because they knew

27244 that the dealer reaction would be very unfavorable.

Q. Did you have a different form of this document headed "Method of Marketing" in different territories, or did you have just one form for all of the territories where you sent it to your branch offices?

A. I only ever received one copy, and that was the copy I received from Mr. Rader, and it was that copy, of which I made five or six copies, after a couple months, and sent one to each of our branch offices.

Q. Prior to 1935, Mr. Bowen, had you ever seen any statement of methods of marketing similar to the one that is there as Commission's Exhibit 2266?

A. Yes. I said that some time before, and I think that that was in the early part of 1934 I had been shown by representatives of the Signal Mountain Company a paper in which a similar restatement of the provisions of Article XI of the Code had been made.

Q. You say that was 1934. While the Code was in effect?

A. I think it was, because I think it was while Article XI was in effect.

Q. It was in effect only about six months, wasn't it?

A. Yes. I think it was during that period.

Q. In other words, it wasn't during the summer of 1934?

A. No, I think December, 1933, or January, 1934.

Q. Now, with regard to these salesmen's cards 27245 which the Carolina dealers' association wanted you to use.

As I understand it, you told them you were eligible for the cards, but didn't want the cards; is that right?

A. No. They told us we were eligible for the cards.

Q. You told them your policy was that which they were satisfied with?

A. I told them that they had accepted and stated as a sales policy on cement what appeared to be an exact copy of our policy. That they should know, from the Lehigh Company's past record, that whenever we stated a policy we stuck to it until we withdrew it. That, therefore, they needed no cards or any trick ways of having us keep up with our policy.

Q. Wasn't the legal aspect of that card arrangement one of the considerations in your decision that you didn't want to handle the cards?

A. I think that if for other reasons we had not discarded the cards, the legal angle would be the next thing we would have considered, but we never got that far.

Q. I understood you to testify that this policy of quoting for shipment within 15 days has been in effect ever since you could remember; is that right?

A. Yes. I think that it has been in effect for at least 20 or 25 years.

Q. You don't mean, then, that it was in effect in 1911 when you went with this company?

27246 A. I wouldn't say it was or wasn't. It is my recollection, however, that in 1911 we were probably still taking business on a 30-day basis.

Q. Wasn't it along about 1915 or 1916 before you shifted to the 15-day basis?

A. It might well have been. The time doesn't come to me, but I know for several years after we discontinued our distributor relationship we continued to sell

Q. I believe you said you adopted this giving 5 days' notice in advance in February, 1932, in order to meet that Lone Star's of Kansas similar policy.

A. Yes. I said we had adopted the policy in 1932, and that, as I recall it, the Lone Star Company had been formally following that practice for several years earlier, and that a great many other competitors, while not making their quotations conditional on the five days' notice, were, in reality, allowing some notice.

Q. Sometimes five and sometimes more than five?

A. No, I would say from two to five days. I don't know of any that allowed more.

Q. When you adopted it in 1932, did you adopt it in all your territories or just in certain territories?

A. In all of them, as I recall it.

Q. In all of them at the same time?

A. Yes. Just to make the matter clear: We 27247 didn't change our prices in all territories at the same time in 1932. We began using the practice in 1932 and, thereafter whenever our prices advanced in any territory it was advanced subject to that five days' notice.

Q. When you advanced your base prices in Lehigh Valley in July, 1932, did you give five days' notice of advance?

A. Yes; our July price, which was subject to five days' notice.

Q. Can you say whether or not that was the time that you first adopted it?

A. It is my recollection we first adopted it in May, 1932, Mr. Wooden, when we made some price advances that were confined to comparatively narrow territories; that is, Kansas and New Jersey, Maryland, and the District of Columbia. I think that was the first time that we used it.

Q. Prior to the N. R. A. Code did Lehigh make good on price declines for longer periods than five days?

A. Not as a general thing; but in a comparatively small number of cases we did so on shipments that had been made more than five days before the reduction.

Q. Did you find competitors making good on declines for more than five days?

A. In some cases our action was based on an effort to meet the competition. One of the reasons we didn't like
the situation was because it involved an element of
27248 not treating all of our customers alike.

Q. In connection with diversions from specific jobs: You stated, I believe, that you became embroiled with dealers at the place at which the diversion was made; is that correct?

A. That is right.

Q. Did that involve price cutting on the part of the diverter, into the other dealer's territory?

A. Not necessarily. It might and did frequently involve merely selling our brand of cement to the dealer's customer.

Q. And it sometimes involved price cutting, didn't it?

A. Sometimes and sometimes not. I recall one case which caused us so much trouble in recent years, which didn't involve that at all.

27251 Q. What is the volume of the shipments made by your Hudson Valley mill, by water, to New York?

A. Mr. Wooden, we haven't shipped any cement from our Hudson River mill at Alsen, since 1928. The plant has been down during that period. We expect to re-
27252 sume operations the first of January, 1940.

Q. Is that the only Hudson River mill that you have?

A. Yes.

Q. At the time it was in operation it might ship, sometimes, amounts by water to New York?

A. We shipped from that plant, as I recall it, part of 1926, most of 1927, and, I think, a little of 1928. We did

make some shipments by water to New York City. As to the relative proportion, I don't recall.

Q. They were substantial, though, were they not?

A. Yes, in proportion to the total shipments, I think they were fairly substantial.

Q. Were they as much as 25 percent of the total?

A. I believe that they were, that there was a period in which we were doing considerable business in the New York markets, and wherever the customers were buying a full boatload lot, quantities equal to full boatload lots, we tried to slip them from the Hudson River.

Q. These inland points north of New York City and on Long Island, you have, as I understand it, certain steps or zones by which the price goes up as the distance increases from New York; is that correct?

A. Generally, that is correct. There are some exceptions to it.

Q. Are those steps or zones based on trucking or
27253 rail cost of transportation?

A. They are not directly based on either. Generally, they correspond to the successive steps of increase in the Long Island Railroad rates, and, if I recall correctly, I think that at one time the prices were in proportion to the increase in rates, but since that time there has been a number of changes in the Long Island rates upward and downward, whereas the price relationship remains pretty well the same as it has been.

27254 Q. During this period when you used a 15-cent charge on trucking, I understood you to say that sometimes you used it and sometimes you did not; is that correct?

A. Yes, that is right.

Q. Were there times during the same period when you used only a part of it, like 10 cents or 5 cents; or did you either use it or not use it completely?

A. To the best of my recollection, we either used it or did not use it. I do not recall any cases where we added portions.

Q. Do you know what the difference in cost of loading to trucks and loading to cars was?

A. I do not know it in detail. I do not know that we ever kept an absolute record. I do know that from observation of conditions that the cost of loading trucks was considerably higher than the cost for loading cars.

Q. Was it more than 15 cents higher?

A. I say, we never kept an absolute record, so I am unable to say whether it was more or less. My belief is that it was in the neighborhood of 15 cents.

Q. The reason you used the 15-cent figure, however, was because that is what competitors were using, isn't it?

A. Because we found competitors making prices which permitted us in some cases to get that additional charge, and we did.

27255 Q. Now, about this warehouse that you established at the Conshohocken mill, why did you put the warehouse there rather than at some large consuming market like Philadelphia?

A. Mr. Wooden, we wanted to have a warehouse that would enable us to meet the competition. This competition existed principally in the heavy-consuming suburban territory outside of Philadelphia. We had an excellent opportunity to get a warehouse at Conshohocken; from all accounts, from all considerations, it seemed a logical place to put it.

Q. There was not any market there for any cement, was there, Conshohocken?

A. There was a market there, and there were lots of good markets immediately around it.

Q. So there was a case where there was a market for the Conshohocken mill at the mill; is that right?

A. To the extent that they sold it f.o.b. mill, yes.

Q. How do you get the cement to the warehouse at Conshohocken?

A. Ship it by rail.

Q. Store it in the warehouse and then truck it out of the warehouse?

A. Store it in the warehouse and sold it from the warehouse to buyers' trucks.

Q. Wasn't that warehouse established in order that you might meet the Conshohocken mill competition in supplying Charles Warner in Philadelphia, the large ready-mix contractor?

27256 A. No, I do not recall that we ever sold a barrel of cement from Conshohocken to the Warner Company. If we did, it was very minor in volume.

Q. Well, isn't it a fact Charles Warner were buying a half million barrels from the Conshohocken mill and trucking it into Philadelphia?

A. I do not know how much they were buying. They were buying a considerable amount of cement from the Conshohocken plant in bulk and trucking it into Philadelphia, but they were continuing to give us a very substantial volume of business by car, and therefore we did not conceive we had to do anything different with respect to their business.

Q. How much lower was the price delivered in Philadelphia by truck than by rail?

A. I do not quite understand that question, Mr. Wooden. We did not have a price in Philadelphia delivered by truck, and I do not recall that the Conshohocken plant did.

Q. What was the difference in the cost of cement delivered in Philadelphia by truck from the Conshohocken mill and the delivered price in Philadelphia from the Lehigh Valley mills?

A. I do not know that, Mr. Wooden. My judgment at the time was that as to most points in Philadelphia the cost of cement by truck would exceed the carload price as was evidenced by the fact that most of our customers in the City of Philadelphia continued to buy from us at our Philadelphia car price even though they might 27257 have bought from our Conshohocken warehouse and taken truck deliveries.

Q. Weren't your Philadelphia customers complaining about the effect of this trucking upon their business in Philadelphia?

A. I do not recall that there was any considerable complaint.

Q. Well, what was the objection on your part to a situation that resulted in delivered costs in Philadelphia being higher than your delivered cost there?

A. I did not have any objection. My consideration—

Q. Then, why did you put in a warehouse?

A. We put in a warehouse, Mr. Wooden, to protect ourselves not so much on our business in the City of Philadelphia but as to protect ourselves in the rich suburban territory outside of Philadelphia to the north and west. That is where the truck deliveries from the Allentown plant were going in very large measure, and that is where our customer relations were being disturbed.

Q. Well, in that territory, wasn't the cost delivered by truck substantially below the cost delivered by rail?

A. Oh, yes, by reason of the price that the Allentown Company made at the Valley Forge plant.

Q. How much below was it?

A. But the difference varied greatly depending upon the distance of the destination from the Conshohocken.

Q. All right. What was the range?

27258 A. I would say that the range was from a minimum of one cent to a maximum of—it is difficult to put a maximum, but I would say 15 cents.

Q. That is, below the carload delivered price?

A. Below our carload delivered price.

Q. And what locality was it where the maximum difference showed itself?

A. At the localities closest to Conshohocken where the cost of trucking was the least.

Q. Would you say the Conshohocken mills were the chief supporter of trucking at that time?

A. No, I would not. I do not exactly know what you mean by the word "supporter" in the territory around the Valley Forge plant. Of course, there was more cement trucked from that plant than from any other.

Trial Examiner Norwood: When they were selling was it f.o.b. mill delivered to trucks?

The Witness: Yes, they were selling f.o.b. delivered to trucks.

Trial Examiner Norwood: Was there any extra charge on the truck delivery?

The Witness: As I recall the situation existing at that time, they had an f.o.b. mill price for trucks, but I am not sure whether or not that same figure was used as a base figure for figuring carload prices. The effect, of 27259 course, was to make a very low trucking price.

By Mr. Wooden:

Q. Was there any relation between this 15-cent differential for loading the trucks and this 15-cent maximum difference in that territory north of Philadelphia?

A. Oh, no. The two things would be completely unrelated.

Q. Just a happen-stance?

A. Yes.

Q. Fifteen cents in both cases?

A. Yes.

Q. Which railroad was it that told you that the Conshohocken mill was going to discontinue trucking?

A. As I recall it, both the Reading and the Pennsylvania.

Q. You gave an estimate of 10 percent as being the proportion of truck shipments from all the Lehigh companies, Lehigh Valley mills; is that correct?

A. Yes, I think I said I thought the 10 percent was a maximum.

Q. It ran higher; I thought you said it was an average.

A. No, I explained the trucking followed—increased, of course, from '25 to '31, but I do not think it ever exceeded 10 percent.

Q. Well, there were certain important delivery or consuming markets, were there not, where the percentage ran higher than that?

27260 A. You mean that in certain markets close to the mill—

Q. Yes.

A. —more than 10 percent of the consumption of that market came by truck?

Q. No. What I meant was more than 10 percent of your shipments went into some particular market as distinguished from the percent that went into all markets.

A. That is still not quite clear, what you mean. If you mean in a market like New York City, for example, we ship more than 10 percent of our Lehigh Valley shipments.

Q. I do not take New York City, but, for example, the percentage that went into one market might be more than the percentage that went into all your markets combined; that is all.

A. Oh, no. Do you mean that more than half of our output went into a particular market?

Q. No.

A. Then, again—I do not understand you, sir.

Q. I do not know that it is important enough to bother about.

Trial Examiner Norwood: Read the question.

(Question read.)

By Mr. Wooden:

Q. In other words, would it be possible that 20 percent of your shipments went by truck into some particular market, while only 10 percent went into all your markets combined?

27261 A. I am sorry, but I do not follow that. I have already said that I estimated that not over 10 percent of our total Lehigh Valley shipments had been trucked

in any one year; therefore, there could not be 20 percent trucked into any particular market.

Q. Couldn't it be 20 percent trucked into one particular destination or a locality, and 5 percent in another; and that would work out to be a 10 percent on the whole. Do you understand what I am driving at?

A. No, I am sorry.

Mr. Wooden: It is very plain to me.

Mr. Jaques: I think Mr. Bowen's very first answer stated what Mr. Wooden is trying to say. Mr. Wooden is trying to say, is he not, with respect to a certain particular market more than 10 percent of the shipments in that market at any particular year might have been by truck; with respect to another and distinct market less than 10 percent, i.e., 5 percent of the annual shipments in that particular market might have been by truck; is that—I think Mr. Bowen mentioned that. Is that what you are trying to say, Mr. Wooden?

Mr. Wooden: That is the point.

A. I think that, coming back to what I said a while ago, if you mean in a given market within the area from which we were trucking, more than 20 percent of our ship-
27262 ments into that market went by truck rather than by rail; that is surely correct.

Trial Examiner Norwood: Some points would run above the average; is that right; above the general average?

The Witness: Yes, in the trucking area, surely. I am sorry if I seemed to be dense, on that one.

By Mr. Wooden:

Q. Did your establishment of warehouses in Washington, D. C., come about at the same time that the Washington arbitrary prices were established in 1931?

A. No. When we established our warehouses in Washington it is my recollection that it was in 1930, in the middle of the summer. There was no reduction in the Washington price, after that time.

There were a number of reductions in the Washington price immediately prior.

Q. Did the establishment of warehouses by other companies in Washington lead to the establishment of that arbitrary price here?

A. No, Mr. Wooden; I don't think that the establishment of warehouses by either ourselves or any other company had any direct bearing on prices.

Q. Then what did cause the establishment of an arbitrary in the Washington, D. C., area?

A. The present prices in the Washington market
27263 were established by the Lone Star Company.

I only have an opinion as to why they did it, and that opinion was that it was done because of the character of the competition in the Washington market. The amount of cement that was sold by companies at less than quoted prices.

Q. How did it come about that the arbitrary could be abolished in May, 1932?

A. Mr. Wooden, the price that you are talking about now, eliminated in May, 1932, was not a price made by the Lone Star Company. That particular price was a price made by the Lehigh Company.

Q. That is what I am talking about.

A. I am sorry. I thought you meant the other price. We made them in an effort to quote prices in the face of the competition here that would enable us to sell our product. The effect of those prices quoted in Washington and through the State of Maryland was to result in what we call a dual base figure at Union-bridge. That existed to 1932, and in the spring of 1932, finding that the competitive situation was considerably improved, that there were no longer any great number of sales in this market at lower than the published prices we had made, and desiring to get away from those prices if we could, we, ourselves, sent out new quotations in 1932 that wiped out the dual base.

Q. That was May, 1932?

27264 A. That is my recollection.

Q. That resulted in an increase in price in the localities affected by—what was it, 24 cents?

A. My recollection is 20, but you may be right.

Q. What change in the competitive situation had taken place that permitted you to raise the price that much in May, 1932, in Washington?

A. The discontinuance, in large measure, of competitive sales at less than published prices. A general observance by the manufacturers of their published prices.

Q. The published prices, then, in effect, were these dual base prices, weren't they?

A. Resulted in prices that resulted in the dual base.

Q. And had those dual base prices been cut, also?

A. I don't now recall the exact time when we made the

extreme low prices in Washington. It was some time in 1931. Those low prices were an attempt on our part to get prices that would be equal to those at which cement was selling here, and the price at which we hoped to sell.

My recollection is there were some cases of sales at less than those low prices, but there was a decreasing number of them, and we began to get a considerable volume of business.

Finding that the market was being generally observed, and being just as anxious as anybody else to get away from those low prices, we attempted in 1932 to advance them.

27265 Q. And your competitors followed you?

A. They did.

Q. Was there not a substantial increase in the purchase of cement by the Federal Government at that time?

A. My recollection is that all of the larger jobs that were pending in the Washington market at that time were bought at the extreme low price. I know that we sold two or three very big ones.

Q. But wasn't there a continuing development of demand in Washington for Government building?

A. Oh, after May, 1932, there continued to be new work coming up.

Q. Now, with reference to your conversation with Mr. Campbell, whom you say you knew as a dealer of yours and also as president of some dealers' association. You said that you felt the same about trucking as Mr. Campbell seemed to feel. Will you specify wherein you and Mr. Campbell felt the same way?

A. Well, I think that we felt the same way about the effects of trucking in leading to the invasion of dealers' markets by other dealers, and I know that we felt very keenly our inability, under trucking, to give the dealers protection in their respective markets. I know that we felt that the extent of trucking at that time was, in a large measure, not a legitimate reflection of the economies of trucking, but, rather, a device by which some manufacturers were selling below their published quotations.

27266 I think we were in accord on all of those subjects.

Q. Do you remember the conversation, or are you just now reasoning, as to what must have taken place between you at that time?

A. I remember the conversation in its general terms, and

remember that it was a general conversation much along the lines of hundreds of conversations we had with dealers in those days. There is nothing in the conversation that makes it stand out in my mind as being different.

Q. Did you learn from Mr. Campbell that he was working for the elimination of trucking by taking it up with the railroad companies?

A. I think that he said that he was doing everything possible to have the railroad companies make a real effort to bring back the tonnage that they had lost.

Q. Did you learn from Mr. Campbell that he was working with other manufacturers towards the elimination of trucking?

A. No, I don't recall that that was discussed.

Q. Did Lehigh Company discontinue trucking in or around Pittsburgh on December 1, 1931?

A. I can't say that December 1 was the date, but I do know that it was in the latter part of 1931.

Q. Now, wherever the Lehigh Company has continued to quote or to load for truck delivery, do I understand it has been its policy to quote the same delivered price as though it were being delivered by rail?

27267

A. No. That is our practice at some points, but it is not the case at Miami or Washington. It is the case in the vicinity of Cleveland, Buffalo, and Oswego.

Q. Well, is it the case wherever your method of pricing is not affected by arbitrary situations like in Washington or Miami?

A. No, I wouldn't say that the two things were related at all. The situation at all three locations of Cleveland, Buffalo, and Oswego, is simply one on our part of meeting competition established by the Huron Cement Company and meeting that competition just as we find it.

Q. Will you please make clear the territories and the extent of Lehigh's policy in those territories of quoting for delivery or loading to trucks on the basis of the delivered price arrived at through delivery by rail?

A. The Cleveland territory consists of Cuyahoga County. At Buffalo it consists of Erie and Niagara Counties, although I have found a few cases in which trucking prices have been quoted outside of that territory. At Oswego the territory in which we found that competition consists of about four counties around Oswego consisting

as I recall, of Oswego, Jefferson, Lewis, and all of part of Wayne and Seneca.

Q. In addition to that, you have named Wash-
27268 ington and Miami areas. Excluding all those points that you have mentioned, is it, then, in all the other territories, the policy of the Lehigh Company to quote the same price for delivery to truck as for delivery by rail?

A. I am not quite sure I understand the question.

Trial Examiner Norwood: Read the question.

(Question read.)

By Mr. Wooden:

Q. To the same destinations, I mean.

A. I am not quite clear as to what you are excluding in the question, but perhaps I can state it clearly by saying—

Trial Examiner Norwood: Is that the general policy?

The Witness: I can state it specifically by stating that in the areas around Buffalo, Cleveland, and Oswego, which I have defined, our prices are the same delivered by truck as by car. In the territories around Washington and Miami our sales are to trucks f.o.b. warehouse. That covers them all.

Trial Examiner Norwood: All other places' prices are based on rail; is that right?

The Witness: Your Honor, there are no other places. I have stated all of them; in both classes.

Trial Examiner Norwood: All right.

By Mr. Wooden:

Q. And where the prices for delivery by truck are
27269 the same as those for delivery by rail, that means, does it not, that it is the price figured on the rail delivery that is made for the truck delivery; is that right?

A. Yes.

Q. Now, isn't there an area around Milwaukee where truck delivery is practiced covering several counties?

A. We don't make any.

Q. Do you know whether that is the fact, or not?

A. Yes, I think that the companies that have silo warehouses at Milwaukee are selling to trucks.

Q. And is your only method of delivery in that same area by rail?

A. That is right.

Q. From your Illinois mill?

A. Oglesby mill; yes, sir.

Q. Referring to these secret prices that you say have existed: Have you found them any more common among non-basing-point mills that you have among basing-point mills?

A. Oh, I find it difficult to answer that. I have never considered it from that point of view, and decide that there hasn't been any particular difference either way.

Q. As a matter of fact, haven't you found the non-base mills more disposed to make secret prices than the base mills?

27270 A. I don't think it is possible to generalize on that. I know some non-basing mills that seem to make more general prices than others, but I know of other non-basing mills which I rarely, if ever, find any deviation, and I find basing-point mills that deviate many times. I really can't make that distinction.

By Mr. Wooden:

Q. What do you mean by non-basing-point mills deviate; deviate from what?

A. Their published prices.

Q. You mean, also, don't you, deviating from the use of a basing point plus freight?

A. No, I am referring only to sales by a manufacturer; whether as a basing-point mill or not, where his actual sales are less than his published quotation.

Q. When Lehigh put in these base prices at the location of other mills, in 1931, isn't it a fact that the Lehigh
27271 Company itself had taken some mill nets in some territory that was as low as the mill nets of these mills at which you established bases?

A. Mr. Wooden, I don't know that I am prepared to accept the statement that we established bases at these mills, but dealing with a practical situation, I think I testified that we had at most of our mills reduced our prices so that the nets we were receiving were as low or lower than the base figures we used, recognized from competing mills.

Q. Aside from that, when you went into other base mill territory didn't you reduce your mill net on some sales to just as low a figure as the mill net on these mills where you put in bases?

A. If you mean the sales that we made at prices at which we were meeting competitive quotations returned us a net lower than our base figures, as low as the figures of competitors you mentioned, yes.

Q. Yes. And then the objection was, wasn't it, that these non-base mills, or the mills that were making these low prices, were cutting somebody's base price; isn't that right?

A. No, Mr. Wooden, I was not interested in what they were cutting. All I was interested in, the competitive situation at which we could not sell at our published prices irrespective of how our competitors were selling it lower than his published price, irrespective of how those
27272 prices were arrived at.

Q. They were cutting, in effect, your base price, weren't they?

A. My only concern was they were cutting their own published destination price, and we were unable to sell because we would not make those kind of prices.

Trial Examiner Norwood: Were they cutting below your base price?

The Witness: Cutting below their own base quoted destination price, and below ours, and because we would make our prices only openly we were unable to match that sort of competition; we were compelled to make public the prices which we hoped would enable us to sell.

Trial Examiner Norwood: Where you meet a single price at a single point, would you feel free to do that for the one sale without publishing the price generally?

Mr. Brick: Your Honor please, he has not made any reference to a single price at a single plant.

Trial Examiner Norwood: No, I am asking him about his system when he met competition at a particular point, and he found that competition was what he termed a secret price, lower than his other, this competitor's published price, and where you meet that one quotation with one sale, would it be contrary to your policy to do that without publishing that lower price?

27273 The Witness: Yes.

I would make this distinction, Your Honor: If a manufacturer simply published a reduced price to a given destination then you would have a situation similar to what we have had many times around Long Island, where a manufacturer has reduced one price to put a given dealer

in a better competitive situation. I have the choice then as to whether to accept merely that reduced price or to reduce other prices. I may do either one. I distinguish between that and a manufacturer having a published price in a given market and selling below that price, and that our company has not wanted to do and has not thought it was sound business to do.

By Mr. Wooden:

Q. And where you found competitors making such deals or transactions secretly, you say you put in a price that made them take as low as that on all their business; isn't that right?

A. That was one of the effects of our action.

Q. Don't you know that that action had a very serious effect upon the ability of such a concern to stay in business?

A. I do not think so, and I know that their action which led to ours had a very serious effect on our ability to do business along the line that we considered fair, open, and honest.

Q. Did you have any of these mills where you made a price base complain to you about it?

27274 A. No.

Q. Never heard any objection raised by any of them to the fact that you had put in a base at their mill?

A. Oh, I have heard from our various reports about the things that they have said about us. I know of no case where any manufacturer has protested to us directly.

Q. Or to Colonel Young, or anybody connected with your company?

A. I know of none.

Q. Don't you know as a matter of fact that a dispute over that question almost disrupted the Portland Cement Association in 1931 and 1932?

A. Oh, I know that—

Mr. Leisure: Just a moment. Now, what part of the record is Mr. Wooden quoting from? I object to going off the record in this way and arguing with the witness.

Mr. Wooden: Let him finish his answer.

Trial Examiner Norwood: I think he may ask him on cross-examination if he heard of that circumstance. Have you heard of that?

The Witness: I know that in 1931 or in 1932 a great many members dropped out of the Portland Cement Asso-

nation, and, I have heard a great many sort of reasons alleged.

By Mr. Wooden:

27275 Q. Didn't you hear that reason among them?

A. I heard that, many reasons, or excuses.

Q. What mills, at which basing points were established by action of their competitors in 1931 and '32 later became non-basing-point mills, if you know?

A. I do not think that there were any mills in 1931 or 1932 became basing-point mills through the actions of their competitors, that they became so primarily by their own action. I will be glad to answer, however, as to mills which during that time became basing mills by saying, as I recall it, several of them thereafter sold at prices which made them non-basing-point mills, such mills included Portland Point, N. Y., East Fultonham and Osborne, Ohio, Paynesville, Ohio.

Q. How about Ada, Okla.?

A. Ada, Okla. I think one or another of the Nebraska bases.

Q. Is it your intention to say that the mills that you named voluntarily put in basing points at their own mills?

A. Mr. Wooden, I have already said that everything that we considered at that time in those days was the practical situation of the kind of competition which confronted us in the field.

Q. Well, will you answer my question? I want to clear up a statement you made a moment ago as to what you intended by it.

A. May I have the question, please?

Trial Examiner Norwood: Read it.

27276 A. Well, I would say that their quotations and sales did operate to make those mills basing-point mills, and I assume that they made those quotations of their own volition.

By Mr. Wooden:

Q. As a matter of fact, they made their quotations at certain points that were different from the regular quotations at those points without making similar changes at other points; isn't that right?

A. Which may have operated in their minds to make the plants a basing-point mill as to certain destinations, not as to others. I have no way of knowing that.

Q. You mean to say that this disaffection in The Portland Cement Association of the part of mills was the result of their own voluntary action in making their mills basing points?

27277 A. I do not know whether it was or not.

By Mr. Wooden:

Q. All right, then.

A. My impression is that—

Trial Examiner Norwood: Let him answer.

A. —the usual disaffection which exists whenever prices are low.

By Mr. Wooden:

Q. Did you ever attend any meeting at which that question was discussed?

A. No, I never did.

Q. Did you ever discuss it among the officers of your company, the effect of the putting in of a base at

27278 competitors' mills?

A. The effect, in what manner?

Q. Well, did you ever discuss the effect of your putting in a base at a mill of a competitor?

A. Oh, Mr. Wooden, every action we have ever taken we discuss the expected results and discuss the results thereafter.

Q. Have you discussed the expected results of that policy, and the effects thereafter?

27279 The Witness: Mr. Wooden, your question refers to certain price changes made by the Lehigh Company in 1931 and 1932. Of course, before making each and every one of those changes we discussed its possible effect, and after the changes had been made we discussed the effect as they were appearing.

By Mr. Wooden:

Q. Well, haven't you discussed the effect among the officials of your company,—haven't you discussed the effect of bringing such or teaching such people who made these secret cuts, of teaching them a lesson?

A. No, we were not interested in teaching them a lesson. We were interested in selling our own cement and arriving at price levels at which we could sell.

Q. You never discussed it from the standpoint of whether it would teach them a lesson?

A. No.

Q. You never discussed it from the standpoint of whether it had taught them a lesson after you had put it in effect?

A. Not from the standpoint of whether it taught them a lesson, but from the standpoint whether the situation had resulted in a better measure of observance of the market.

Q. In putting bases into effect in other mills' 27280 locations, you would discuss the expected effect from the standpoint of the stability of the market, too, didn't you?

A. Again, Mr. Wooden, I dislike to take exception to your question, but my question is that we did not put in bases at other mills, as you say.

Q. Well, what did you do?

A. During 1931 finding that certain mills were making a great many quotations and sales at less than their published price, the method of selling with which our company was not in accord and which we would not follow, and having reduced our prices to exceedingly low levels throughout all those territories, and having found the secret price concessions of competitors continuing to be made from even those low prices, we did in certain instances in 1931 compute prices throughout all those territories on the base figures with those competitive mills using in each case base figures which were no lower 27281 than those used at our own mills, and not lower than figures at which the mills in question had sold substantial quantities of cement.

By Mr. Wooden:

Q. When you are talking about base figures, there, aren't you talking about mill nets that you found?

A. I don't follow your question; I am sorry. I don't understand it.

Q. You talked about figures you found these non-basing mills using. You are talking about their mill nets, aren't you?

A. I am talking about prices lower than their published quotations, having no constant figure reflected as a base figure at their mill, and I am talking now about prices which indicated a departure on their part from their previous practice, indicating that they were no longer operating as what we considered non-basing mills, but that

they had elected to become base mills, at least to the extent of some of their sales.

Q. Isn't that true regarding every mill and every sale, that as to a particular sale it is a base? In other words, the mill net on that particular sale makes it a base, doesn't it?

A. No, we call a base when we find a number of price at different locations which have that similarity in common that they reflect a common base figure.

Q. I take it that you want us to think that these mills that you are referring to intended to make themselves base mills and to have quotations figured on their mill
27282 as a base; is that right?

A. Mr. Wooden, I don't want to make you believe anything as to what competitive mills considered. All I am interested in is giving you the facts of the situation as we found them, and the facts as to the actions we took.

By Mr. Wooden:

Q. Well, in determining the base that you applied at these other mills, isn't what you did was just take the delivered price that you found quoted, deduct the freight, and then make that resulting figure the base at the mill?

A. Not on a single sale, but having found that same characteristic in a number of sales, existing in them—

Q. You said you never made a base at one of these other mills lower than your own base. Isn't it a fact that you made the Painesville, Ohio, base $1.06 in May, 1931, while your own Buffalo base was continued at $1.21?

A. I wouldn't call Painesville and Buffalo adjacent bases.

27283. Q. Isn't cement sold in common territory from both Buffalo and Painesville?

A. In some measure.

Q. Now, will you answer my question whether or not the Painesville base wasn't put in by you in May, 1931 at $1.06, and you kept your Buffalo base at $1.21?

A. Mr. Wooden, I would suggest that the comparison that you are making might better be made between the Cleveland and Painesville bases, they being adjacent bases.

Q. You sell cement from Cleveland that comes from Buffalo, don't you?

A. That is correct, but they are separate and distinct bases.

Q. Well, can you answer the question?

A. If the record shows that those respective base figures existed, I will say that we did, and I see nothing inconsistent in that with my former statement, as I do not consider Buffalo and Painesville as adjacent bases in the limits of what I have previously said.

By Mr. Wooden:

Q. Didn't you put in a base at the Rapid City, S. D., plant, and keep your base at Mason City higher than the one you put in at Rapid City?

A. No. In the first place, I will have to make the
27284 same reservation with respect to the base at Rapid City as I did with the other, and it is my recollection that when we began quoting prices with reference to a Rapid City base, the base figure was the same as we were using at Mason City.

Q. Wasn't there a period of time when you had a lower base at Rapid City than you had at Mason City?

A. I don't recollect it, Mr. Wooden, and I doubt it.

Q. Didn't you increase your base price at Mason City and not increase it at Rapid City?

A. I think we did that at one time and I think that was followed some time thereafter by the Rapid City mill increasing the base figure at Rapid City.

27285 Washington, D. C.,
November 17, 1939.

27286 JOHN C. BOWEN thereupon resumed the stand and testified further as follows:

Cross-Examination (Continued) by Mr. Wooden.

Q. Mr. Bowen—

A. Mr. Wooden, on Wednesday I testified about bids to the United States Government and stated that we had made a great many such bids at f.o.b. mill prices not accompanied by a control clause. You asked me to produce some typical examples of that kind.

I requested our office at Allentown to send me a number of them. They have done so, and I have them here.

Q. I will be glad to look at them.

27287 (The witness hands document to Mr. Wooden.)

Q. I understand, however, from your later testimony, that these are all cases where the destinations were known.

A. Oh, yes.

Q. Referring to the subject of secret departures from published prices; did you class, among such secret departures, cases where a mill put in sealed bids on bids to public purchasing agencies that were different or lower than their previous published quotations to the commercial trade?

A. No, I wouldn't call that a secret departure. It is obviously not secret. It is a public bid.

Q. It is secret at the time it is filed, isn't it?

A. No, it is not secret when it is received by the prospective buyer.

Q. But it is secret until the bids are opened, as far as the other bidder himself is concerned, isn't it?

A. Oh, yes, in that sense.

Q. Then I take it you did not include any such cases as that in 1931 when you assumed that prices made were secret departures from published prices?

A. No, I wouldn't have considered such cases as secret departures. They would have been more in the nature of any other published price change by a manufacturer, of which there were many during that period.

Q. Well, isn't it a fact that in 1931 the Lehigh
27288 Company assumed that the Louisville Company and the Kosmos Company had made new bases at their mills or met their mill basing points by reason of having quoted lower prices on secret bids to public purchasing agencies in Kentucky and Indiana?

A. I would think that constituted a new market.

Q. Constituted what?

A. I would think that constituted a new market price, we elected to meet it.

Q. But I understood you to say you would not assume those to be secret prices calling for any such action where the bids were sealed bids?

A. I would not consider it secret price; Mr. Wooden, but if any manufacturer makes published quotations, and if I feel that the Lehigh Company can meet them, we do it.

Q. Referring to these papers that you produced awhile ago covering f.o.b. mill bids to the Government are there any there that antedate April, 1939?

27289 (The witness examines documents handed to him by Mr. Wooden.)

A. No, in a hurried glance I do not find any that antedate April, 1939, and I would like to explain that I requested our Allentown office to send me twenty-five or thirty typical cases, which they did, without reference to date.

By Mr. Wooden:

Q. But you have already said that these are all cases where the destinations were known?

A. Yes, sir.

Q. Well, I will return them to you as I do not think they are important or material by reason of your testimony regarding them and regarding the subject matter.

Isn't it a fact that the Lehigh Company put in base prices at the mills of the Louisville Company and the Kosmos Company because they had made lower prices on certain public bids in Kentucky and Indiana?

A. Mr. Wooden, a quoted price is calculated with reference to base figures at those two mills, and, as I recall the situation at that time, the prices made by those companies on public lettings were one of the principal, if not the principal factor that entered into our decision.

27290 Q. And yet you say that it was not secret price cutting in that case; there was not secret departures from their published prices in such cases?

A. No, Mr. Wooden, not in the sense that we discussed secret prices the other day. I would consider it the same as any other published quotation by a manufacturer.

Q. Why didn't you take the same action in 1938 where you had some local departures from published prices in Iowa and Mississippi?

A. Entirely a matter of judgment on our part; certainly the first thing we thought of doing in those cases was exactly what we had done in 1931 and 1932.

Q. Was it a question of the degree to which it was being done, these departures, that dictated your action?

A. I think that entered into our consideration, of course. I think, however, that the factor that probably carried more weight was the limited extent of territory in which the situation existed rather than the degree in which it existed in those territories.

Q. Doesn't the fact that a non-base mill has the oppor-

tunity of adding the freight from the base point to its immediate locality make such mills peculiarly likely to be the ones that indulge in secret departures from published prices?

A. No, I wouldn't think so, Mr. Wooden, and my experience has been, as I said, there were some mills
27291 that have been basing-point mills that have indulged a great deal in a secret departure from their published prices. There have been a great many mills operating as non-basing points that have one the same thing.

Q. They always depart from their own published prices when they go into someone else's territory, don't they?

A. No.

Q. What do you mean by "published prices"; a quotation?

A. That is a designation of a quotation which the manufacturer has issued.

Q. Referring to this advance in May, 1932, in the Iola district. Who led that advance?

A. We did.

Q. Was that the time that the mills in that locality began to use five-day notice of advance?

A. No. The five-day advance notice originated in that territory,—had been in use by a number of the manufacturers prior to that time, but, as I recall it, it was our advance of May, 1932, in which we first included that provision in our quotations.

Q. In the Iola territory?

A. In the Iola territory, and the advances made at about the same time in New Jersey, Maryland, and the District of Columbia.

Q. Had there been a base established at the mill 27292 of the Missouri Portland Cement Company?

A. Well, the Missouri Portland Cement Company has two mills, and, as I recall it, both of those mills are basing-point mills.

Q. I am referring to the time of May, 1932. Had there been a base established at the mill of the Missouri Portland Cement Company?

A. Since you are referring to May, 1932, I take it you are talking about the Sugar Creek mill of the Missouri Company rather than the St. Louis plant, and my answer is yes, I am quite sure that Sugar Creek was a basing point.

Q. Who put in the base there?

A. To the best of my recollection, they, themselves, issued quotations.

Q. Were they quotations like these others, that, in your opinion, reflected a base there, and then some other concern made it an established base?

A. I don't recall that that was so, Mr. Wooden.

Q. Hadn't the Missouri Portland Cement Company been one of the principal concerns departing from published prices?

A. No, I wouldn't say so, Mr. Wooden. I wouldn't say that they were outstanding.

Q. Which domestic producers did not take action in cutting off these dealers in the Eastern Seaboard markets who handled foreign cement?

27293 A. The principal one was the National Portland Cement Company. There was a time when, from our observation, all companies except that one, seemed to be operating on a similar policy, but as time went on there seemed to be a considerable degree of departure of it by some competitors.

Q. Now, you testified that with regard to these lists, arbitrary lists, or lists, rather, of destination prices in arbitrary territory, like in some portions of New England and around Boston, in that area, that you would not supply competitors with copies of those lists before their effective date, but that you would do so after they had become effective. Is that correct?

A. That is correct.

Q. As a matter of fact, you did supply such lists to competitors after they became effective, didn't you?

A. Yes, to anyone that asked me for them.

Q. Which ones asked you?

A. Oh, I would judge that perhaps a dozen people asked me for them.

Q. Can you name some of them?

A. Yes. I recall Mr. Robeson of the Nazareth Company, Lone Star Company, North America, Alpha, and—

Q. Universal-Atlas?

A. Yes, I think they did.

Q. Well, now, you supplied those arbitrary lists
27294 to those companies, including Lone Star. Didn't you get Lone Star's list of arbitrary prices in and around Washington, D. C., and Baltimore?

A. Yes; I recall when the Lone Star made those prices.

I asked them if they would mind giving me a list of them, and they readily agreed.

Q. Are there any other areas or any other companies that you obtained prices from your competitors in that same way?

A. I think there is one occasion I secured a list of prices around Baltimore from the North American Company.

Q. How about the Florida arbitraries?

A. I don't know of any Florida arbitrary that could answer that description. I found prices in Miami and, perhaps, Jacksonville, that didn't correspond with any base figures, but that's all that I recall there.

Q. Why did the Lehigh Company resign from The Cement Institute in March, 1931?

A. Because it did not seem to us that Institute membership held any possibility of being of any value in carrying out any of the purposes for which the Institute had been formed, and because a great many other companies had dropped out of the Institute.

Q. Can you say why there were many resignations at that time?

A. Oh, I would say that probably the principal
27295 factor was the reduced prices that prevailed generally. Manufacturers were trying to avoid any items of cost that they could avoid. I know that that was one of the factors in our minds.

Q. Did you put in any base at a competitor's mill prior to your resignation in March, 1931?

A. Well, again taking your wording as referring to the method the Lehigh Company has used as I described it, I do not recall exactly, but I do not think that we did take any such action prior to March 13, 1931, but I do know there is no connection whatsoever between the two things.

Q. Can you explain why the price went up in Boston and New York in July, 1938, and went down at the same time in Philadelphia?

A. Yes, because the Allentown Cement Company issued quotations in Philadelphia which reduced its price there. We met that. At the same time the Allentown increased them and we rather reluctantly, as I have described, followed them.

Q. Reluctantly increased yours, you mean?

A. Yes, with considerable hesitation.

Q. Of course, what I meant was what conditions in Phil-

adelphia, New York, and Boston that you knew in your observation of the trend called for opposite trends of prices at the same time?

A. Well, while the effects of the move were to show an opposite trend, the actual condition was to have
27296 prices in both New York and Philadelphia in about the same proportion; in other words, the move involved the withdrawal of the extremely low prices that had existed in New York and Philadelphia.

Now, if the Allentown Company had merely issued quotations using the base figures previously used in the Lehigh Valley, and without figuring on their Conshohocken mill, the result would have been to have no change in its price at Philadelphia, and a considerably higher price in New York, so that while it is true what happened was to reduce prices in the one area and increase them in another, the final result was to have a somewhat proportionate range of prices throughout.

Q. What conditions of supply and demand in those respective markets explain the upward movement in one case and the downward movement in the other?

27297 A. Well, it is a fact that at that time in 1938 the demand in the New York market was on the upgrade there very sharply, and it is also true in Philadelphia during 1938, and continuing to the present time, the demand has been very, very poor, but I do not say and do not believe that considerations of supply and demand were what led the Allentown Company to make its change in prices.

I think that that change was intended, and we so considered it at the time, as a very clever strategic move on the part of the Allentown Company to maneuver us into a position where it would be extremely difficult to continue the low price we had been quoting along the Atlantic Seaboard, and it certainly worked that way.

By Mr. Wooden:

Q. And you objected to being maneuvered into a position where you had to raise the prices?

A. Objected to being maneuvered into a position where we had to make a reduction in one case in order not to get into a very badly losing position; had to accept an advance in other areas which we would rather not have met.

Q. You testified that, did you not, that the reports you

made to the Bureau of Mines on production, shipments, and so forth, were identical with those you made to The Cement Institute?

A. To the best of my recollection, they are.

27298 Q. Do you report the distribution of your shipments by States to the Bureau of Mines?

A. Yes, we do.

Q. In your reports made to the Bureau of Mines, have you made it a condition with them that they would not disclose separately the figures for your company?

A. I do not think that we have imposed any conditions on them. I think that we have submitted our data under conditions which the Bureau of Mines has stated.

Q. Well, is that a condition that your figures will not be disclosed separately?

A. I think it is, yes.

Q. Did you ask the Bureau of Mines not to disclose your figures separately from those of others?

A. I do not recall that we ever made such a request. I think that we have merely been submitting figures under whatever conditions the Bureau of Mines has stated when requesting them.

Q. As a matter of fact, the Bureau of Mines never has disclosed the figures for each company separately, has it?

A. Not to my knowledge.

Q. When it comes to The Cement Institute figures they are shown for each member separately, are they not?

A. Oh, yes.

Q. Did the Lehigh Company sign a code of ethics

27299 of The Cement Institute in 1929 or 1930?

A. Yes, we did.

Q. You would not consider your signature to that Code along with the signature of other members as constituting any agreement or understanding between those who signed such a document?

A. No. We considered it then as to just what we thought it was then and believed it to be. The first step in the direction of formulating the basis for a trade practice conference.

Q. You said on direct that the Institute had never attempted to influence the policy of the Lehigh Company; is that correct?

A. Yes, sir.

Q. Do you also say that the Lehigh Company has never

attempted to influence the Institute with regard to selling policies or price policies?

A. It may be, Mr. Wooden, that you are referring to the period during which the Code was under consideration or in the course of preparation. We did participate in many of those discussions. That is the only instance in which I know that the Institute has been at all in-
27300 volved in anything approaching sales policies.

By Mr. Wooden:

Q. I am asking what the Lehigh Company did with reference to any attempt to influence the Institute or other members of the Institute, regarding price policies.

A. You stated price policies, now. I understood you to say in the first instance sales policies.

Q. Well, sales policies or price policies.

A. Mr. Wooden, except for such discussions as may have taken place during the Code period, I know of no case in which the Lehigh Company has attempted to influence the Institute or any member thereof as to sales or price policies.

Q. Do you still make that answer, notwithstanding the Lehigh Company's participation and your participation in the work of the Marketing Research Committee through 1936 and 1937?

A. Yes, I do. I don't consider that general research into any subject constitutes an attempt to influence the Institute or its membership.

Q. Well, weren't you attempting, in that research, to find ways and means of defending and maintaining the basing-point system?

A. No, Mr. Wooden. I considered the work of the Marketing Research Committee to be one of studying the entire field of cement marketing. If that research showed that there was anything wrong or unsound about our
27301 methods of selling, or if that research could eventuate in any better or sounder or more acceptable method of selling, we surely wanted to know it.

Q. In other words, it was still an open question in the industry as to whether the basing-point system should be continued or maintained?

A. Mr. Wooden, I have repeatedly said that I do not consider that there is a basing-point system in the cement industry in the sense that it has frequently been described, and, so far as I am concerned, so far as the Le-

high Company was concerned, our interest in the work of the Marketing Research Committee was to have that committee shed whatever light it could on any phase of the marketing of our product so that we might have been able to have the best information we could for our guidance.

Q. You say there was no attempt to mold the minds of the professors who undertook that study?

A. To the extent that conversations between people result in molding each other's minds, of course. I know that I, myself, have had several talks with the professors in which we have ranged over the whole field of marketing, both from the practical and theoretical standpoint.

Q. And in so doing you were not attempting to influence sales policies of any of your competitors?

A. Not a bit of it. I was listening, in those discussions, as much as I was talking.

27302 Q. Now, referring to Commission's Exhibit 16-B, which I will describe as being the bids in North Carolina in 1932, where you used various base points and quoted prices at those basing points without using destination prices. Do you remember that?

A. Yes, I think I remember what you have in mind.

Q. Were bids made in a similar way to States other than North Carolina?

A. I don't recall any, Mr. Wooden.

Q. How did it happen that it was confined to North Carolina?

A. North Carolina asked for them in that fashion.

A. All right.

Now, referring to Commission's Exhibit 1095 and Respondents' Exhibit 1315-A to M, inclusive. Those papers relate to that Nicaragua bid in 1937. Do you remember what I am referring to?

A. Yes, I do.

Q. As I understand the situation, in making up your bid for delivery in Nicaragua, you took a previous price that had been bid for delivery in Panama; is that right?

A. That was it, I believe.

Q. How long before the Nicaragua bid was this Panama bid you refer to?

A. Oh, there had been several, Mr. Wooden, from time to time, during the period of, I would say, a year before the Nicaragua bids.

27303 Q. And can't you tell me how long before the Nicaragua bids the last Panama bid was?

A. No, Mr. Wooden, I don't carry that in my mind.

A. All right.

Was your delivered price in Panama intended to be the delivered price in Nicaragua?

A. No. My statement was that in the case of Panama, under competition, a market price had developed. The ocean freight rate from New York that entered into that price was well known. It was fixed as a railroad rate might have been.

Q. Weren't there some ocean rates that varied from the one used?

A. You mean in the case of Panama?

Q. Panama and Nicaragua. That is, the rates were not the same by all shipping lines, were they?

A. In the case of Panama there had at one time been some uncertainty about the rates, but that uncertainty had been succeeded by a very definite rate published by the Panama Railroad Steamship Company, and that rate had been well known and well determined.

Q. Weren't there some other shipping lines that had different rates than the Panama Steamship Company?

A. Oh, Mr. Wooden, I don't doubt that we could have secured varying steamship rates to Panama, but one of the conditions of the Panama Canal bidding was that
27304 shipments must move over the Panama Steamship Line.

Q. You could also get varying rates to Nicaragua, couldn't you?

A. We could, yes.

Q. As I understand it, your F.A.S. price at New York on that Nicaragua bid was $1.77; is that correct?

A. Yes, sir.

Q. And you said your New York price for domestic sales was $1.85; is that right?

A. Yes.

Q. And do I understand that the $1.77 was the F.A.S. equivalent of that former Panama business?

A. That's right.

Q. Did you intend to make your Nicaragua delivered price the same as the Nicaragua prices of your competitors?

A. I had no intention either way. I merely applied

whatever reasoning I could to the situation; decided that to quote a price equivalent to the Panama price was a fair, sound, and reasonable thing to do. That it was quite likely that competitors might analyze the situation in the same fashion so that they might not be put in a position of quoting a higher or lower price to another branch of the Government than they quoted to the Panama Canal.

Following that reasoning I arrived at the $1.77 price as being the proper price quoted in New York, and,
27305 therefore, I set out to get the best cost of transportation to Nicaragua that I could, and added that to the $1.77.

I had no knowledge as to whether a competitor might not be able to get a better rate than I and be out on the delivered price. I was not interested in that.

Q. You got the business. Did you actually ship on the same rate that you figured on?

A. Oh, I am sure we did. I have heard nothing to the contrary.

Q. Didn't you make a miscalculation on the insurance in that bid?

A. Not a bit of it.

Q. There was some dispute as to whether or not your bid was really low, wasn't there, in view of the difference in insurance?

A. All I know is a report that is contained in the files from our man in Washington, who, as I recall it, told us what in turn had been told him by someone in the department, that a competitor had called on him saying that the Lehigh price did not include the insurance. That is all I know about it.

Q. As I understand it, you bid a price in that instance that you rather expected your competitors would meet?

27306 A. I reasoned that it was likely that competitors would meet the New York price, but whether they had or not I would not have quoted any lower or higher than $1.77 because I would not have put myself in the position of either forcing my Panama Canal price down or bidding a lower price to the War Department, nor would I put myself in the position of quoting the War Department a higher price than I quoted to the Panama Canal.

Now, then, as to the C.I.F. price in Nicaragua, I had no expectation either way. Certainly if the first part of

my analyses were correct, and if competitors should get the same transportation with insurance rates as they got, the results would come out the same, but if the first part of my analysis were incorrect, and if competitors quoted differently in New York from what I had done, then that of itself would bring the Nicaragua result out differently.

By Mr. Wooden:

Q. Why did you hesitate to quote a higher price for Nicaragua than for Panama in view of the fact that your New York price was higher than your Panama price?

A. Mr. Wooden, we just like to feel that we are treating our customers as fairly as we can, and I just would not like to put myself in the position of quoting the War Department,—in this case I think it was the Agricul-
27307 tural Department,—a higher price.

Q. Even though it was only—

Mr. Leisure: Let him finish, please.

Trial Examiner Norwood: Let him finish.

A. A higher price than I quoted to the Panama Canal.

By Mr. Wooden:

Q. Even though it was only, a higher price would have been only the same as your New York price at the time?

A. That is right.

Q. You were also asked in that bid to quote an f.o.b. mill price, too, weren't you?

A. I do not recall that.

Q. Referring to Respondents' Exhibit 1315-D, which is a copy of your bid, doesn't that show you were asked to bid f.o.b. mill, and that you did not so bid?

A. Yes, it does. I have said that it has been our practice to quote f.o.b. mill prices where the Government land-grant rates were involved, and while we have had no particular reservation against quoting an f.o.b. mill price here it did not seem to us, nor did it prove to be of any particular significance.

Q. But you and all the other competitors were asked to quote f.o.b. mill and none of you did; is that correct?

A. We were asked and did not.

Q. Don't you know from the record of the bid-
27308 ding that none of those, none of the others bid also?

A. I do not recall that they did.

Q. Has the Lehigh Company ever filed water rates with the—did it ever file them with the Code Authority or with The Cement Institute?

A. You mean water transportation?

Q. Water transportation rates; yes.

A. I do not recall any instance, Mr. Wooden.

Q. Did you ever obtain any information from The Cement Institute or from the Trade Practice Committee giving water rates?

A. I recall a few cases of such information.

Q. Have those water rates sometimes been for transportation to places like Panama or Nicaragua?

A. No, I do not recall any such. The cases that I recall have been isolted number of cases to points in the United States which are not rail delivery points but which are only accessible by water.

Q. Mr. Bowen, if my statement in a question yesterday when I asked you whether or not you did not have a Painesville, Ohio, base of $1.06 in May, 1931, at the same time that you had a Buffalo base of $1.21, if that is not correct will you supply information that will correct me on it?

A. Will you read the question again so that I may understand it?

Trial Examiner Norwood: Read the question.

27309 (Question read.)

Mr. Leisure: Now, I think, Your Honor, if Counsel wants to prove any facts, he knows how to prove them, and I see no reason for this question.

Trial Examiner Norwood: The witness may answer as to whether or not he will furnish the information.

Mr. Brick: That is a request, Your Honor please, that should ordinarily be directed to Counsel.

Trial Examiner Norwood: Oh, I don't know about that.

Mr. Wooden: Mr. Leisure asked Mr. Simpson of the I.C.C. to do that very thing.

Trial Examiner Norwood: The objection is overruled. Will you answer that question?

The Witness: Yes, I will be glad to do it.

By Mr. Wooden:

Q. Now, another question about this Nicaragua matter. What was the source of the information that the Lehigh Company had on the shipping rate to Corinto, Nicaragua?

A. Our information, in the form of a rate quoted us by

the steamship company. I do not know whether the file shows the name of the company or not.

Q. Well, Respondents' Exhibit 1315-B merely shows that your New York representative reported to you what the steamship rate was. You do not know where he got it?

A. Why, I know that he got it from the steamship
27310 company because he had no other possible way to get it.

Q. Well, which steamship company and how do you know it?

A. I do not know which steamship company; and the way I know it is because he had no other source of such information, and the report is from a clerk in our New York office who handles all our export shipments, and who handles the work of accumulating freight, insurance rates, and other transportation data.

Q. Well, do you know what steamship company he obtained it from?

A. No, I do not, Mr. Wooden. I cannot tell by the files.

Mr. Wooden: Your Honor, I move to strike any and all the witness' testimony with regard to this information being obtained from the steamship company in view of his lack of knowledge as to what company it was and his lack of knowledge as to their knowledge as to it having been there obtained.

Mr. Leisure: It seems to me the witness has stated sufficient surrounding data to support his testimony. He stated the regular course of business. Here is a clerk in the New York office whose business it is to obtain rates from the insurance companies.

Trial Examiner Norwood: I think that would hardly be grounds to strike. It would go to the weight of it.

Mr. MacIntyre: Your Honor please, there is no showing but what that very clerk may have called The Ce-
27311 ment Institute office, which is also in New York; how do we know where he got it.

Mr. Leisure: Mr. MacIntyre should prove that, if it is true.

Mr. MacIntyre: But it most certainly does not show it came from the steamship, as this witness has so testified.

Mr. Leisure: I think it goes to the weight.

Trial Examiner Norwood: I think it goes to the weight.

Mr. MacIntyre: When things become so weightless as to be immaterial, it seems to me they ought to be stricken.

Trial Examiner Norwood: Yes, but I could not decide that just at this time without having the record and studying it, and I hardly think it should be struck, anyway.

27315 By Mr. Wooden:

Q. In your opinion, Mr. Bowen, does the method of quoting prices in the cement industry by the use of base figures and quoting on a destination basis, affect the extent of competition between the various mills under
27316 one chain ownership, such as you have in the Lehigh Company?

27317 A. As I understand the question, it is to the effect of the present price situation in the competition between our own mills.

By Mr. Wooden:

Q. That is right.

A. I don't consider, from a practical standpoint, that our mills are in competition with each other in the same sense they are in competition with other mills.

Q. I know, but aren't they in competition with
27318 each other, to some extent, in some respects?

A. Not from the practical viewpoint with which I approach competition. They are not trying to take business away from each other.

Q. They each have certain territories, do they not, which they supply?

A. Each has a certain territory, and in some cases those territories overlap, slightly, although we have endeavored to station our mills so that they don't overlap to too great an extent.

Q. And do they sometimes ship into each other's territory?

A. Well, I can't say that there is a clearly defined territory around each mill, but there are and have been a number of destinations to which we have, at one time, shipped from one mill, and, at another time, from another mill.

Q. It is your opinion that a system of selling f.o.b. mill as distinguished from the one that I put in my previous question, would have no effect upon the competitive relationships of the mills within your particular organization?

A. Mr. Wooden, you speak about a method of selling f.o.b. mill. That is not entirely clear to me, just what you mean by an f.o.b. mill price. If you will—

27319 Q. I mean by that a price at the mill at which any purchaser could come to the mill and take possession and take the cement anywhere he wanted. Do you think that method of selling would have any effect upon the competitive relationships between the mills in your own organization?

A. Well, I take it, that you are talking, there, about a price f.o.b. mill which would be an invariable price, the same to all buyers.

Q. Well, take it that way, first; then take it the other way.

A. Well, I do have an opinion. I will be glad to give it to you.

Let me say, first, that you are prescribing a method of selling which seems to me entirely artificial, and I cannot conceive of it, even remotely, being brought about by a competition. Now, instead—

Q. Aside from that.

Mr. Leisure: Let him finish, please.

A. In order to— Under that sort of a method, I think one or two very vital factors would come into operation which would also have to be defined before a definite opinion could be given. The first, and to me the most important one, is you are talking about an invariable, or a fixed f.o.b. mill price. For how long a period does that price remained fixed? In other words—

27320 Q. Take that into account.

A. Well, answering first, if there was no restriction in that respect, then I don't think you have the kind of a price that you are describing. You don't have an invariable price; you have a variable price.

Q. It goes up and down.

A. It can go up or down, at the manufacturer's pleasure, presumably.

Q. But at the same time to all purchasers at the mill.

A. Yes, but without any restriction as to the frequency of change, it just isn't an invariable mill price. The result would be a variable mill price, I think.

Q. You are using the word "variable" in two senses, as to time and as to customer. Take the customers, at the same time.

A. I think that the two can't be dissevered, Mr. Wooden. If you have the same price to all customers, then to have any sort of a workable system you must also prescribe

the length of time for which it remains the same to all customers. Otherwise, you don't have an invariable price.

Q. You would have it invariable to all customers, but the time in which it would remain invariable to all customers would be the same, wouldn't it?

A. I think it is necessary to prescribe the time; whether it is a month, a week, or a day, or an hour.

Q. Assume it any way you like. Assume this:
27321 That the price is the same to all customers at a given time at the mill. What effect would that have upon the relationship between the mills within your own organization?

A. Well, I think I will have to answer that in two ways: First, if there was no restriction as to the length of time for which the price remains invariable, then I think if such a practice were followed by all mills, that in actual practice, the result, both as to the cost to the customer and its result to the manufacturer, would be only slightly different from the situation that exists at the present time. The only difference that I see there, in practice, is that non-basing-point mills would become basing-point mills in the sense that they would have a figure at their mill.

Q. If you had

Trial Examiner Norwood: Go ahead and finish.

A. That, I think, is the ultimate result of the situation that you have described without a time limitation. Now, taking the other side of the situation and assuming that you have an invariable price for a relatively long period of time, you then have, of course, just one more artificial element in the situation, and one of the first considerations that would then enter into the picture would be the
27322 degree of enforcement of such a structure, and whether that enforcement were contemporaneous or whether it were applied after the event.

Q. What kind of enforcement do you have?

Mr. Leisure: Let him finish.

A. You are prescribing to me a method of selling which I can't conceive would come into operation except by some artificial means, and, I presume, by law, and that involves, first, the question of enforcement.

Now, carrying the situation to its logical outcome, and assuming a price at each manufacturer's mill, an invariable price, kept invariable for a long period of time, say three or four months, and enforced, and with some means

presumably, of requiring each of the manufacturers to make his price public at the same time so that there couldn't be maneuvering backwards and forwards, each one maneuvering for position as to the price he would publish, then you would have the pure condition of an f.o.b mill price, invariable and inflexible.

By Mr. Wooden:

Q. What would be the effect—

Mr. Leisure: Let him finish.

A. I find it necessary, to answer your question, to be sure we understand each other as to the conditions that I think that I am answering on.

Trial Examiner Norwood: Go ahead.

27323 A. Under those circumstances I would look for situations something like this:—

By Mr. Wooden:

Q. Among the mills of your own company? That is my question.

A. I am answering your question as to the mills of our own company, but, of course, I am taking into account that mills of all companies would be making their price in the manner you are saying. I can't do otherwise, I don't think.

I think your question said that. Because the market is a fluctuating one, there would be—

Q. You mean the demand?

A. The demand is a fluctuating one, and the location of the demand is a fluctuating one, there would be periods during which the mills in certain locations would suffer badly—

Q. Your own mills.

Mr. Leisure: Can't you let him finish without interrupting his trend of thought?

Trial Examiner Norwood: Let him finish.

Go ahead; continue your answer.

A. I can only answer, Mr. Wooden, the effect on our own mills by attempting to analyze the effect on mills in general.

By Mr. Wooden:

Q. That is not the case.

Trial Examiner Norwood: Show us the effect on your own mills; that is, mills in the same chain.

27324 A. Well, I will go on.

I would expect to find periods in which some mills suffered sharply for want of tonnage in the areas adjacent to them, while other mills had a great deal of tonnage—

By Mr. Wooden:

Q. Speaking of your own chain, now.

Mr. Leisure: I ask the witness be allowed to answer. I objected to this question. I objected to going into this, and if he is going to be allowed to give his opinion I ask that Counsel let him alone until he can give his opinion.

Mr. Wooden: I am entirely within my rights in holding the witness to the question, and asking him to explain as he goes along.

Trial Examiner Norwood: Finish your answer.

A. (Continuing) —other mills had a great deal of tonnage available to them. This condition would naturally apply to our mills as well as to competitive mills in the respective areas that we cover.

By Mr. Wooden:

Q. Isn't that true now?

Mr. Leisure: I object to that constant interruption.

27325 Trial Examiner Norwood: He isn't interrupting. He has finished his answer.

Mr. Leisure: No, he hasn't Your Honor. He has his mouth open, and he interrupted him again. He keeps interrupting until he can't even think.

Trial Examiner Norwood: Go ahead.

The Witness: May I have the last part of my answer again?

Trial Examiner Norwood: Read it.

(Last part of answer read.)

A. I would expect the first results of a situation of that kind to be that competitive mills located in those territories that were suffering from lack of demand at the time might attempt to make prices such that they might ship into adjacent territories. The only manufacturers who would be strongly driven toward that end would be those who did not have plants in those adjacent areas. I would look for that situation to create a period of some disorder in marketing.

I think that some of the weaker mills in territories that suffered from a more or less chronic state of overcapacity

as related to demand, might go through receivership, might eventually even go out of business, although I don't find cement plants going out of business very quickly.

And then I think that before that particular trend had anywhere near run its course, some one or another of
27326 these companies having mills in only one location would come to a realization that the method prescribed to him would in effect assure each mill or group of mills of a monopoly in their own territory, and that this manufacturer in whose mind self-preservation is very strong would say to himself, "All I need do is to make prices which indicates to my neighbors in adjacent territories that I am disposed to respect their monopoly if they will respect mine, and therefore I would look for a situation where each group would remain generally within their areas enjoying the fruits of that monopoly situation being relieved by sporadic raids into other territories.

There would be a situation which—

Mr. Wooden: Just a moment, Your Honor.

Trial Examiner Norwood: Let him finish.

Mr. Leisure: Let him finish.

Mr. Wooden: Your Honor, the witness is making an argument, and is not responsive to the question.

Trial Examiner Norwood: Let him answer.

Mr. Leisure: I ask that you enforce the rule, and that the witness be allowed to finish.

Mr. Wooden: It is not responsive to the question. I have allowed him to run on without objection. The argument is perfectly familiar to me.

Mr. Leisure: Mr. Wooden gets an answer that he does not like and tries to stop in the middle of it. That
27327 is what it is.

Trial Examiner Norwood: I am going to let the witness finish his answer, and I will consider a motion to strike all of it or any part of it.

Go ahead.

A. I would think that in the development of that situation, the mills of our company would be affected not primarily by the actions we might take but only by the action taken by the companies not having mills in adjacent destinations. The principal factor of the varying market to us might be to have more business at one mill than in another, but we would be affected principally not by—so much by the action we might take in consequence of such

a system as by contending efforts of the companies having mills in only one of the various districts.

By Mr. Wooden:

Q. Under the conditions that you have last assumed, wouldn't buyers, or couldn't buyers buying at one mill f.o.b. mill, couldn't they take that cement into the territory of other mills owned by chain companies, and upset price conditions in that chain company's territory?

A. Surely, if the f.o.b. mill price at the other mill resulted in a lower cost at destination.

Mr. Wooden: Your Honor, I am not going to make any motion to strike any of the witness' testimony on
27328 this even though it was not responsive, but I do, before closing, wish to supplement my previous motion to strike the testimony, the witness' testimony regarding costs of products, and relation of cost of products and price on the additional ground that the witness was asked to produce records of the company, costs, which would enable a proper cross-examination of his direct testimony on those subjects. That has not been done.

Mr. Leisure: Well, as to the question of costs, I do not think the witness has gone beyond what was repeatedly done with Commission's exhibits, or Commission's witnesses when they called various Government witnesses, and I recall the ruling repeatedly on such questions, he can certainly tell us if he knows. If this witness had attempted to give us exact figures, and things of that kind, I think the books might have been important, but I do not think they are important with the kind of testimony this witness has given.

Trial Examiner Norwood: I think it is the duty of Counsel to cross-examine the witness on those things, and if he has not presented a basis for it, it goes to his weight.

Have you cited pages and lines?

Mr. Wooden: We haven't been able to do that yet.

Trial Examiner Norwood: Counsel may renew that later and I will certainly study the record.

27329 Mr. Wooden: I have one further question I want to ask.

By Mr. Wooden:

Q. Reverting to this matter that I asked you about a day or two ago of your looking at answers that you had

prepared out of the hearing room, have you not gone to Counsel table at recesses in the hearing room from time to time and looked at the answers which you had prepared before the hearing began?

A. No, sir. I may on one or two occasions have done so, to glance at the questions, merely to see what subjects were coming up.

Q. Were the answers along with the questions that you glanced at?

A. There were answers on there, but I did not glance at them, nor did I need to glance at them.

Q. You have done that, have you, during the short recesses that were taken from time to time?

A. I recall one instance where I was interested to know what subject was coming up next.

27330 HAROLD M. SCOTT, being called as a witness for the Respondents and being first duly sworn, testified as follows:

Direct Examination by Mr. Leisure.

I am president of the Keystone Portland Cement Company and as such am the chief executive officer of that company. I have been president and in charge of operations since September, 1930.

27331 I have been in the cement business since 1905, which was after I got out of high school. I went to work for the Kelley Island Lime & Transport Company in their branch office in Indianapolis. Their main office was in Cleveland, Ohio. They were cement distributors for the Lehigh Portland Cement Company in the Middle West. My headquarters at that time were in Indianapolis. I was stenographer and sales correspondent to start with; later I was put on the road as a salesman. After that I was district manager, assistant sales manager and later western sales manager. I left the Lehigh Company in February of 1916. I was then in Chicago, the Indianapolis

27332 office having been closed. My service with the Kelley Island Lime & Transport Company, and then the Lehigh Cement Company was continuous; that is, the Lehigh Company took over the business. All we knew of it was that we had a change in our salary checks, and a

change of the name on the office door. In 1916 I left the Lehigh Company and went to the Edison Portland Cement Company in New York as vice-president and sales manager. From 1916 to the early part of 1930 I was with the Atlas Portland Cement Company. When the Atlas Company was sold to the Steel Corporation, I joined the Keystone Portland Cement Company, being elected president in September, 1930.

27333 Prior to 1930 John Barnes was president and principal stockholder of Keystone. He died in July of 1930. I believe that Keystone was organized in 1926 as a new company. The Keystone Company which owned a plant at Coplay, Pa., has no connection with my company. I believe that the Keystone Company with which I am connected found that the original name of the old Atlas Company was Keystone Cement Company. I believe that goes back into 1889 or perhaps 1890, but there is no connection of any kind between the Atlas Company and the Keystone Portland Cement Company.

I believe Keystone produced its first cement in July of 1928. I was not connected with the organization at
27334 the time. When the Keystone Company was organized in 1926 I was with the Atlas Portland Cement Company as general sales manager. Before I came with the Keystone Company I was familiar with the demand for cement in the northeastern states at that time. At the time Keystone was organized there was a very brisk demand for cement, particularly in the East, through the years of 1925, 1926, 1927 and 1928. It started to slow down in 1929. The Atlas Company shipped cement from Hannibal, Mo., as far east as Augusta, Me. The Atlas Company was able to do it at that time.

27335 I am a director of Keystone. There are no officers or directors of Keystone who are officers or directors of any other cement company. Keystone is not a ~~subsidiary~~ of any other cement producing or selling company; nor does it have any relation with any other company; nor does it operate under any working agreement of any kind with any other company; nor does any other cement company own any stock in Keystone. To sum it all up, Keystone is not affiliated in any way whatsoever with any other manufacturing company.

Keystone has its principal office in Philadelphia
27336 with branch sales offices in New York, Boston and our works office at our plant at Bath, Pa. It has

no warehouses or other distributing points. It operates one mill located at Bath, Pa., Northampton County, in the Lehigh Valley. Its present mill was built by Keystone and I think I am familiar with the reasons for its construction.

27345 This particular farm property which was taken
over, for quarry property by Keystone; was drilled
27346 and analyzed thoroughly by the geological department of Lehigh University. Its property adjoined the old Bath plant of the Lehigh Company. The stone there, drilled down to a 300 foot level, enough for 50 years full operation, is of the very finest quality. It has a good railroad location with two belt lines reaching all of the trunk lines that come in. We have also the advantage of the big markets that were served by the other plants in the Lehigh Valley district; and at the particular time the plant was projected and built, there was a very strong demand for cement here in the East. The plant could serve a real economic purpose in its erection and operation.

27349 Q. Mr. Scott, at the time we adjourned for lunch we were discussing the different types of cement that you manufacture; do you recall?

A. Yes, sir.

Q. Does your company manufacture—I assume you manufacture standard cement?

A. Yes, sir.

Q. Does it manufacture high early strength?

A. Yes, sir.

Q. Did the Keystone Company manufacture high early strength at the time you joined the company?

A. No, sir. We began its production in 1931.

Q. In your company is the manufacture of those two kinds of cement the same or is it different?

A. No. While, of course, we use the same machinery, the same general process for high early strength cement, we use an entirely different composition. We grind finer and burn much harder and add a little iron, which we don't add to our regular product.

27351 The witness identified Resp. Ex. 1355 as Fed-
27352 eral specification No. SS-C-201 dated September 30, 1936 for high early strength Portland cement, approved by the Director of Procurement for the use of all departments and establishments of the Government and

became effective not later than July 15, 1937. Keystone meets that specification; and has to meet it if they ship any for Government purposes. That is a specification the Government uses.

27353 (RESP. EX. 1355 was offered and received in evidence.)

27354 Q. Mr. Scott, I would like to take up the subject of trucking with you.

Do you load any trucks at the Keystone Cement plant?

A. No, sir.

Q. How many railroad sidings do you have in your mill?

A. I think we have seven or eight.

Q. Are they adjacent to your packing and loading platform?

A. Yes, sir; immediately.

Q. Well, just how is your cement loaded?

A. Well, we carry our cement in bulk; of course, in large silos. We have fifty silos, and then it is packed out each day as the orders come in, coming into the packing machines where shipment in bags are required. We use the Bates Packing Machines; we also have two

27355 modern packing machines, somewhat similar. There is a weight on one side of the machine, and sort of a saddle on the other side where the bag is placed. There is a lever pulled, 95 pounds of—90 full pounds of cement comes into the bag. The lever is tripped, the flow is stopped, the bags are tripped or kicked off the machine, and fall onto a belt conveyor, where they are carried over to the car door, caught by a packer and put on his dolly truck and trucked into the cars. Bulk cement is loaded into box cars or into hopper bottom, or air activated-container cars, as they have recently come into the picture. That is loaded with the spout arrangement and the cement blown into the cars in bulk.

Q. Is that packing and loading in cars, can you tell us whether it is a continuous operation?

A. Oh, yes, absolutely, it is continuous as we have orders.

Q. Do you have any facilities, Mr. Scott, for storing package cement?

A. Yes, sir.

Q. Was there ever a time when you did load trucks at the Keystone mill?

A. Yes, sir.

Q. Can you tell us whether or not this truck loading involved in any way any changes in your packing and loading operation?

A. Only that it would have the effect, and did have the effect, of holding up your carload shipments of cement. Cement was packed out, and instead of being put 27356 on the continuous belt and carried over to the car door, it had to be carried over to the side of the packing house and then loaded on a truck by hand,—much slower operation.

Q. Can you tell us whether it had any difference with respect to labor—I mean loading—whether it was any difference in your use of labor?

A. No. The payment to the packers was on a barrel basis, as it is today—that is, today we are paying a much higher rate, but it had the effect of slowing down the packing operation, and the packers, themselves, did not like it.

Q. Mr. Scott, have you ever owned or operated your own trucks for delivering cement?

A. No, sir.

Q. I do not believe I—if I did, we will pass it—I do not believe I asked you the period of time when you loaded customers' trucks?

A. That was in, 1928, I believe, to 1932. I think we discontinued in 1932, although we did make some deliveries in 1933, I believe, on a road contract that was closed in 1932.

Q. During the period that you loaded customers' trucks out of the mill, what did your sales to trucks amount to?

A. Comparatively small, with respect to our total volume, and in the period of my management; that is, since the latter part of 1930, 1931, and 1932, I do not believe that we trucked more than ten or fifteen thousand 25357 barrels, that is, delivered to trucks. My recollection is that there were one of two road jobs up in that part of Pennsylvania that were serviced to the trucks during that period.

The witness identified Resp. Ex. 1356 as a statement showing shipments of Keystone via rail and trucks for the years 1929 and 1933. Those are actual operations of his company and he can vouch for their accuracy.

Examination on Voir Dire by Mr. Wooden.

27358 Q. Mr. Scott, in the course of preparation of this statement, did you ascertain what the shipments were for 1928?

A. I do not recall. You see, we only started shipping cement in 1928, about the latter part of July. We had only two kilns operating at that time. I think our total shipments in 1928 were only about 400,000 barrels, 450,000 barrels, something like that.

Q. You do not know what proportion of that went by truck?

A. No; my recollection of seeing figures would perhaps—well, we may have shipped twenty or twenty-five thousand barrels.

Q. A higher percentage than 1929?

A. The percentage relation would be higher, of course, because the total volume was smaller.

(RESP. EX. 1356 was offered and received in evidence.)

27359 *Direct Examination by Mr. Leisure (Continued.)*

Q. What was your policy, Mr. Scott, when you became president of the Keystone Portland Cement Company,—what was your attitude towards trucking?

A. Well, I was not very keen about trucking.

Q. Well—

A. It disturbed the operations in the packing house, and for what was being accomplished on the volume I do not think it was worth while to bother with it. It was largely competitive, a question of meeting competition as we found it there, the reason we continued trucking up to some time or another like 1932.

Q. Now, you mentioned one objection. Did you have any others?

A. Well, that would be my recollection now, would be the principal point in my mind.

27360 Q. What is your knowledge, if any, with respect to test inspections, delays in that respect?

A. Well, each year we were having more and more cement tested by outside laboratories. Those inspectors come in and they would be forced to wait to load carloads

until we were able to load out a truck load or two for some fellow, and it upset them all the while, and they were fellows you wanted to oblige, perhaps curry favor with as well as the truckload buyer.

Q. What have you to say, if anything, as to whether or not it caused any labor dissatisfaction?

A. I do not recall any to the point of labor asserted themselves that they would quit, or anything like that, but they were very much—they were rather temperamental, your packers, and they are high-priced labor, they are very necessary, they know that; and when they start packing they want to keep on packing. They work fast and work hard.

Q. What have you to say, if anything, as to whether or not it increased your accident hazards around the plant?

A. There was always the danger of that because with the railroad sidings, cars dropping down by gravity to be loaded, there was always a possibility—and the switching engines coming in there to pick up the loaded cars, carry them out—there was always the chance of some farmer or truck man coming in there of being hit.

27362 Q. When did the Keystone stop the practice of loading customers' trucks?

A. I believe it was in the summer of 1932, although we did load some trucks in 1933 for a State highway job that we had sold in 1932; a slow-running job.

Q. I show you this exhibit and ask you whether or not it refreshes your recollection as to when it was discontinued?

Mr. Leisure: May I have this letter dated August 2, 1932, for identification.

(The document referred to was marked for identification "Respondents' Exhibit 1357.")

By Mr. Leisure:

Q. Does Respondents' Exhibit 1357, for identification, refresh your recollection as to the time when you discontinued trucking; the practice of loading customers' trucks, rather?

A. Yes, sir.

Q. What is that? Just tell us what it is.

A. This is a copy of a letter to a customer in Bethle-

hem, dated August 2, 1932, advising him that ef-
27363 fective immediately we were discontinuing truck deliveries at our plant except on contracts previously entered.

(RESP. EX. 1357 was offered and received in evidence.)

Q. When you took this action did you or did you not advise your trade, generally, that you would no longer load trucks?

A. I think that we sent a letter similar to this to a few dealers around there to whom we were delivering. There was no occasion to send out a general letter to contractors.

The witness identified Resp. Ex. 1358 as an inter-
27364 office memorandum, from Frank Cook, one of Keystone's salesmen in Virginia, addressed to the assistant sales manager in Philadelphia, advising him that he has picked up that the Lehigh Company has discontinued trucking from their Fordwick, Virginia, mill. This paper came to his attention at or about the time it was received at the Keystone main office.

Examination by Trial Examiner Norwood.

27365 It was a recollection that it was received prior to the time Keystone discontinued trucking.

(RESP. EX. 1358 was offered and received in evidence.)

The witness identified Resp. Ex. 1359 as a type-
27366 written memorandum by Keystone's Albany salesman, W. H. Jagels, dated July 30, 1932, enclosing quotations received from Lone Star and Glens Falls Cement Companies and also advising that Atlas and North American Companies had discontinued trucking from their Hudson and Howe's Cave plant. This letter came to his attention at or about the time it was received by his office. The witness identified Resp. Ex. 1360 as a typewritten note of Lone Star from its Albany office, stating that it is discontinuing truck deliveries at their Hudson plant; Resp. Ex. 1361 as a quotation from Lone Star dated July 29, 1932, to John T. D. Blackburn, Albany, New York.

Examination by Trial Examiner Norwood.

27367 These statements were picked up in the field and brought to Keystone by its salesmen, and they accompanied this report, Resp. Ex. 1359. All that relates to the discontinuance of trucking.

Examination Voir Dire by Mr. Wooden.

This figure on Resp. Ex. 1361 in pencil of $1.50 Hudson is a working out of the delivered destination price
27368 of $2.26, bags 40¢, and 36¢ for freight, which would indicate that Lone Star, on July 29, was quoting $1.50 at their Hudson mill. He does not know whether $1.50 is the Hudson Valley base. That is what that quotation figures back to. It is witness' opinion that the 45¢ per barrel difference for cement in bulk than for cement in cloth bags was not a newly adopted differential but that it had been quoted for some time. However, he does not have any definite recollection of it.

27375 By Mr. Leisure:

Q. Now, Mr. Scott, without taking the time to go over any of these other letters that you received, can we shorten it—can you tell me whether or not you had any information by telephone with respect to abandoned trucking by competitors?

A. You mean whether any of our salesmen tele-
27376 phoned any information in?

Q. Yes.

A. It is very possible that they did; also, there was a general price move there about the same time; and it would be the practice of the salesmen to telephone in whatever information they picked up.

Q. And as to your own company, did you have any agreement or understanding with any competitors as to whether you would eliminate trucking?

A. No, sir.

Q. And do you know of the existence of any such agreement?

A. No, sir.

Q. Mr. Scott, has the Keystone Portland Cement Com-

pany ever been interviewed by any representative of a
27377 railroad concerning trucking?

A. No, sir.

Q. Have you ever had any agreement or understanding with any railroad official as to that purpose or that would in any way influence your attitude towards trucking cement?

A. Not the slightest.

Q. Or have you ever had any agreement or understanding with any dealer association or with any builders' supply organization with respect to your attitude toward it?

A. That we would or would not truck?

Q. Yes.

A. Not at all.

Q. Has The Cement Institute ever had anything to do with the policy of the Keystone Portland Cement Company with respect to trucking,—truckloads?

A. No, sir.

Q. Mr. Scott, is your mill so situated that water transportation is available as a method of distributing your cement?

27378 A. No, sir.

By Mr. Leisure:

Q. Has the Keystone Company ever employed water transportation in distributing its cement?

A. No, sir.

Q. Do you have any facilities for water shipments?

A. No, sir.

27379 Q. Have you ever shipped clinker by water?

A. No, sir.

Q. Do you make any deliveries, Mr. Scott, where water shipment is used in part?

A. Yes.

Q. And how is that done?

A. That is in to the New York market. That is railed to tidewater and either railroad or private lightered beyond, to destination, in the New York area.

Q. Is there any difference in the transportation cost between the railroad lighter and private lighter?

A. Yes, between railroad lighter and private lighter, the private lighter is more expensive.

Q. When the railroad lighter is used can you tell us

whether the rate on cement from Bath to New York includes the lighter charge?

A. It does include the lighterage charge. That is part of the through service at which the rate is quoted.

Q. In your operation, do you know of any
27380 cheaper-than-rail transportation by which you can distribute your cement?

A. No, sir.

Keystone has 4 kilns, but only two are operating at the present time. Keystone's capacity was almost a continuous building operation. These two kilns were completed and put into operation. Almost simultaneously the two other kilns were under construction and then went into production. Keystone's capacity is about 2,400,000 to 2,500,000 barrels per year. This is the way Keystone estimates its capacity; each kiln is capable of producing 1,750 to 1,900 barrels a day, giving a monthly production of over 200,000 barrels and a yearly production of 2,500,000 barrels. Keystone's grinding capacity is in balance with its kiln capacity, so that it is not a theoretical but an actual capacity.

Q. Mr. Scott, does your Company subscribe to the Mallory service? Did it, I mean?

27381 A. Yes, sir; we subscribe to some statistics that Mr. Mallory got out as an individual some years back.

Q. I want to call your attention to Commission's Exhibit 3008-A, B, and C (handing document to witness). Do you recall how your company happened to subscribe to Mr. Mallory's service at that time, Mr. Scott?

A. Yes. Shortly after I went to the Keystone Company in September of 1930 Mr. Mallory came in to tell me about his service with which I was familiar, in a rather general way, and I had known him for many years. He was president of the Edison Company while I was there at Edison, and I knew that he needed the money, and I was glad to give him a subscription.

I think it was rather a nominal amount. I don't know what the charge was. It wasn't great.

Q. Now, that Commission's exhibit seems to indicate that you subscribed to it from July 1, 1930, to August 31, 1933. Is that correct; as to your subscription?

A. This looks—Keystone is in the list here as shown, July 1, 1931, to June 30, 1932.

Q. Well, is that the correct date, as far as you know, Mr. Scott?

A. I think that is about right. I do not recall just exactly when he came in. It may have been in the latter part of 1930; it may have been in the early part of 1931, but it was shortly after I went to the Keystone Company.

27382 Q. Now, at the time you did subscribe, or at any time during the period of your subscription, for that matter, did you know who the other subscribers to the service were?

A. No, sir.

Q. And, as far as your company is concerned, what did the service consist of, if you know?

A. Well, as I recall, the service included a consolidation of statistics on contracts awarded, largely supplied by the F. W. Dodge Corporation. I think perhaps it may have had some record of pavement awards in there, and I seem to recollect that he also, from this statistical base, made an estimate as to what the business would be for the year, or for the forward period.

Q. Well, what, if any, value did you gain or find, as far as the benefit to your company is concerned, in having this Mallory service?

A. I think it was like any other statistical data that you might receive referring to building awards and future demands, and, as I say, I think that it was consolidated in a little more concise form and more easily read; you would get the gist of it rather than reading a long group of statistics which Dodge, or some other organization, might publish and do publish.

Q. During the period that you subscribed to that service, Mr. Scott, did your company ever report its estimated capacity to Mr. Mallory?

27383 A. Not at all.

Q. Did Mr. Mallory ever rate the capacity of your plant during that period?

A. Not at all.

Q. Did that period did you ever consult with Mr. Mallory about the rated capacity of your plant, or of any other cement plant?

A. No, sir.

Q. I take it from what you said that Mr. Mallory never reported to you any capacity of other plants?

A. No, sir.
Q. In your district?
A. No, sir.
Q. Was your company, Mr. Scott, a member of The Cement Institute in 1929, 1930, or 1931, or 1932?
A. No, sir.
Q. When, if you know, did your company join the Cement Institute?
A. We joined The Cement Institute, I believe, in June or July of 1933. I think June of 1933.

27384 The witness identified Resp. Ex. 1366 as a letter addressed to Keystone for his attention to Mr. Coffin, of Nazareth, explaining a meeting apparently held following a Portland Cement Association meeting in May, 1933, in which it was proposed to use The Cement Institute as the trade association; Resp. Ex. 1367 as a

27385 copy of his letter to Mr. Coffin in reply to Coffin's letter of May 20th; Resp. Ex. 1368 as a Cement Institute letter dated June 19, 1933 to Keystone, addressed to witness as president and advising him that Keystone had been elected to membership in the Institute.

Mr. Wooden: Your Honor, we object to these offered exhibits on the ground that they are irrelevant and immaterial, and that they add nothing whatever to what the witness says and can testify to concerning his membership in the Institute, when it began, why it was applied for, and so on, and I am willing—I am offering to stipulate in that connection that a number of Respondent manufacturers joined The Cement Institute about time of the N.R.A., or of the National Industrial Recovery Act for the reason, or for the expected benefits that might accrue to them under that organization and under the National Industrial Recovery Act and the N.R.A. Code.

27386 Trial Examiner Norwood: Now, what is the purpose of those?

Mr. Leisure: Well, the purpose of the exhibit is to show the reasons which actuated this witness in having his company join the Institute at that time. The statement that Mr. Wooden has made now is the first time that I ever recall having heard, since the case started, that he did not intend to argue in the end that the Institute was conducted as a part of this conspiracy, and that—.

Mr. Wooden: Did you get that out of my statement now? I did not intend that.

Mr. Leisure: Now, it seems he is changing front on that. This, as far as we are concerned, is as if a prospectus came to someone and bought something as the result of that prospectus; having bought it you were later accused of having made the purchase because of a conspiracy, and we want to offer—excuse me.

Trial Examiner Norwood: Do you want to offer that to show the objectives of the Institute?

Mr. Leisure: No; showing some pretty good sales talk as to why he joined the Institute; the advantages to him. This is the prospectus that caused him to act, in other words; this refutes what I always understood Mr. Wooden charged before; the Institute was a group of conspirators.

27387 Mr. Wooden: You may still understand that.

Trial Examiner Norwood: Does that negative that in the slightest degree?

Mr. Leisure: It does to me. It has nothing to do with conspiracy. It shows ample good reasons for this one company to take the course they did take.

Trial Examiner Norwood: Cannot the president of this company tell its reasons for it without having correspondence to corroborate it?

Mr. Leisure: Yes, but I think Mr. Wooden may say later on that he does not believe everything this witness says. Here is documentary evidence at the time and shows what he did.

Trial Examiner Norwood: It is a letter he wrote.

Mr. Leisure: No, Your Honor.

Mr. Seeley: No.

Mr. Wooden: One of them is.

Trial Examiner Norwood: If there is any purpose in taking that we might as well take it.

Mr. Leisure: We think there is awfully good purpose in it, Your Honor.

Mr. Wooden: There is not a thing in it that is not covered by my offer to stipulate; a number of Respondents joined the Institute at that time because of the expected benefits under the N. R. A. Code.

27388 Mr. Leisure: Of course, we want to show that the Institute did these things for the companies; it is not just a group of conspirators, as I had always thought Mr. Wooden was going to argue until a few moments ago.

Trial Examiner Norwood: The objection is overruled. They will be received as marked.

Go ahead.

(RESP. EXS. 1366, 1367, and 1368 were offered and received in evidence.)

By Mr. Leisure:

Q. And what was the occasion—what were the
27389 circumstances under which you joined The Cement Institute, Mr. Scott? What was the occasion for your joining?

A. Well, the N. R. A. legislation was filling the papers I think by that time it was an effective thing. General Johnson said you were not much of an American if you did not have a blue eagle up, and it was our impression at that time that unless you did function through the Trade Institute or trade association provided for that you could not share in Government business that might be coming out, and that was our reason for joining The Cement Institute.

Q. Now, having joined, did the Keystone Company receive the statistical service of The Cement Institute?

A. Yes, sir.

Q. And you told us the period of time that you continued to receive Mr. Mallory's service, I think; or have you?

A. I don't know how long Mr. Mallory's statistical service, individual service, was continued, but I believe shortly before or shortly after, The Cement Institute started functioning with similar statistical service.

27390 Q. Now, to be sure that I have these dates correct, Mr. Scott: During the period of time that this company was a member of The Cement Institute, whether you furnished estimates of your plant capacity to Mr. Mallory or to The Cement Institute?

A. No, we gave him no estimates whatever.

Q. Now, during the period after June, 1933, can you tell us whether or not Mr. Mallory ever gave your
27391 plant a so-called capacity rating?

A. Well, I think he gave the Keystone Company plant a capacity rating, as he did the other plants, in connection with a proposed plan of allocation which was touched on in paragraph 6, or something like that, of the Code, the plan to be approved by the President of the United States before becoming effective.

He was the statistician at that time and I suppose the

committee having that work in hand asked for these plant capacities; that is, his estimate of them.

Q. Are you referring now, Mr. Scott, to what has been referred to here as Article VIII of the Code of Fair Competition? Is that the article you are referring to?

A. Yes, sir; there was an article there. I thought it was VI, as I remember.

Q. Now, Mr. Scott, were you advised as to how the estimated capacity of your plant was arrived at for the purpose of this proposed plan under Article VIII of the N. R. A. Code?

A. Yes, I think that this Allocation Committee, or whatever their committee was, stated that they had used some plan of the three largest consecutive months of clinker production as a basis for rating the actual capacity of a plant.

27395 Q. I would like to call your attention now, Mr. Scott, to another Commission's Exhibit, being Commission's Exhibit 2889, and ask you what the circumstances were under which you wrote that letter (handing document to witness)?

A. I recall writing this letter to Mr. Mallory, Commission's Exhibit 2889. As I have said before, he was president of the Edison Company. He gave me a job one time.

He has always been interested in statistics, and very
27396 capable, and here he has made an estimate as to what the total volume would be for the year 1934, and, apparently, this letter written on January 25 would have been after the December statistics were in, and the 12 months of the year 1934 established, and I was simply complimenting a friend on a good job as a statistician.

Mr. Wooden: Your Honor, the letter shows on its face all of that. I don't see there is anything added by the witness' testimony.

Trial Examiner Norwood: Let me see the document.

(The document was handed to the Examiner.)

By Mr. Leisure:

Q. Did these figures which you mentioned have anything to do with shipment by individual companies in the districts, Mr. Scott?

A. This exhibit here referred to?

Q. Yes.

A. In this letter?

Q. Yes, sir.

A. No, sir. It was his estimate of total volume in the district.

Q. What is your policy, Mr. Scott? Can you tell us whether or not it has been your practice to cut production in time of slackened demand?

A. Yes. We can fill up in a hurry if we are not shipping it, and, of course, we curtail in a period of slackened demand.

27397 Q. What is your storage capacity?

A. We have a large storage capacity of finished cement of about 450,000 barrels, and of clinker inside storage of about 150 or 175,000 barrels, but we would curtail production before we would get completely filled up. We would reduce our production to try to establish a continuous rate of operation to spread the work among the labor, and to accommodate our power contract to the best advantages.

Q. Have you increased your storage capacity since the plant was built?

A. Yes, sir. The second battery of silos were finished, I believe, in early 1931.

Q. Did the special specifications affect that in any way?

A. Yes. Even with this large capacity we are pressed now to accommodate all of these special specifications. That is, this past year I think we have made cements to 14 different types of specification, and each must be carried separately in the finished storage.

Q. What is your policy, does your storage capacity influence you in deciding what percentage of capacity you will operate?

A. In part, yes.

Q. What is your experience, Mr. Scott, as to your overhead costs,—can you tell us whether or not they are fairly constant?

A. Yes, sir; they are.

27398 Q. And do you make any attempt to schedule your plant operations in advance?

A. Oh, yes. That is something that is getting continuous study all the while, and, as I have previously said, we try to keep our plant operating at some rate of capacity to provide employment for our organization.

Q. Did you shut down in the Keystone plant last year?

A. Yes, sir. That is in the year 1938?

Q. Yes.

A. The Keystone plant went into operations on a two-kiln basis about the 12th of January; for two months in the middle of the year we were able to operate three kilns, then went back to a two-kiln operation and continued that up to about the 23d of December.

Q. And over what period of time—I mean, when you are in operation—how many days a week and how many hours do you operate?

A. Well, that is a continuous operation.

Q. Why do you operate on that basis?

A. Well, that is a question of your burning, primarily. It is very desirable to keep a kiln operating once it starts, a question of fuel economy and also a question of harm resulting to the kiln linings, if you let them cool off, shut the plant down, shut the kiln down.

Q. Do you give any notice, Mr. Scott, of shut-downs?

27399 A. Yes, sir; before we—well, we will decide in our operating organization that we are going to have to shut down, or shut down at a certain period, but we have an agreement with our union that we will announce that shut down, I believe it is either a week or two weeks before the shut-down takes place.

Q. And how does that affect your equipment when you shut down, as you have described? Is that the only way?

A. Yes, sir.

Q. How many men do you employ?

27400 Q. Mr. Scott, in your experience in the cement business, have you observed whether there is competition between the companies selling cement in the districts in which you have done business?

A. Yes, sir; very keen competition.

Q. Who determines the policies of your company

27401 in so far as the rate of operation is concerned?

A. I do.

Q. Do you adjust your rate of operations on any definite percentage of your capacity?

A. Well, as I have previously stated, two or three or four-kiln operation gives a better balanced operation, that is to run two at a time, or three at a time, or four at a time.

Q. Mr. Scott, are you familiar with Respondents' Exhibit 1369, and can you tell us what it is?

A. Yes, sir. Exhibit 1369 shows a percentage relation, or, rather, a percentage of plant capacity as shown by our actual production for the years 1930 to 1938, the years 1928 and '29, the plant being under construction, and it was difficult to establish what might be the capacity of the plant at that time, or in those years.

27402 (RESP. EX. 1369 was offered and received in evidence.)

Q. Mr. Scott, do you make any use of the statistics issued by the Bureau of Mines?

A. Yes, sir.

Q. How long have you watched the figures of the Bureau of Mines?

A. Ever since I have known there were any such figures.

Q. Well, what use do you make of the Bureau of

27403 Mines' figures, Mr. Scott?

A. Well, there are several groups of very interesting figures that the Bureau of Mines gives. One is the shipment of Portland cement by districts, the exports of shipments—

Mr. Wooden: Your Honor—

Trial Examiner Norwood: Wait.

The Witness: Shall I stop?

Trial Examiner Norwood: No. Finish your answer. Let him finish his answer.

The Witness: I think it is the Bureau of Mines that gives shipments of Portland cement by States. The Bureau of Mines also gives the average price, or, as they call it, the factory value of Portland cement by geographical districts. Those four figures seem to impress themselves on my mind.

27404 Q. Do you make any use of the figures as far as your sales force is concerned? I am speaking now of the Bureau of Mines' figures.

A. Yes. Particularly with respect to the shipments by States. We check up to see whether our salesmen are as aggressive as they should be in a given territory. The standard of measurement, of course, being their performance against the performance of the total as given by the Bureau of Mines.

Q. And do you make any effort to go after new business, more business?

A. Yes, sir. Just as active as we know how.

Trial Examiner Norwood: Do you compare sales figures with these Bureau of Mines' figures to see if you are getting your share of the business?

The Witness: Oh, every month, Your Honor, as soon as the Bureau of Mines' figures come out; we will say that the Bureau of Mines show that total shipments into
27405 Delaware, we will say, last month were 30,000 barrels, and represented an increase of 20 percent, and if our salesmen shipments into Delaware were X number of barrels, and shipped a decrease of 20 percent, we would naturally get the bud right after that salesman and see why and what was going on.

Trial Examiner Norwood: Why don't you compare them with your last year's sales figures, and previous months?

The Witness: We can do that, but a salesman can have a decrease. It is possible a salesman's figures may show a decrease, and if you do not know what the total consumption into the State was you could not pass fair judgment on his performance, because even though he had the decrease he might have shown a bigger percentage of the going business.

Trial Examiner Norwood: Go ahead.

By Mr. Leisure:

Q. Does your use of statistics on cement have anything to do with any agreement with any other company, Mr. Scott?

A. No, sir.

Q. When you say "No, sir," I take it, do you or do you not mean that there is no such an agreement?

A. There is no such agreement. We are running our company.

Q. Are you, Mr. Scott, interested in how the balance of the shipments in your districts are divided among other companies?

27406 A. Yes, that is of interest. We want to say if our men are as effective as some of the others who may be competing along the same lines, same territory, and then for a matter of personal satisfaction to me I like to check up the shipments of some of my old employers, the Atlas against the Lehigh Company, or the Edison against our company, and so on, to see if their organizations are as effective as they were when I might have been there.

Q. As to the statistics which you received from the Institute, The Cement Institute, how does your use of these figures compare, if at all, with the way you use the Bureau of Mines' figures?

A. Well, I believe we do not get shipments by States from The Cement Institute, but only total shipments by companies and by districts, and one virtue of the Institute's figures was that they come out fairly early in the month, so that they can be currently of interest where the Bureau of Mines sometimes are rather late; several weeks after the performance.

Q. Does your company, the Keystone Company, have any agreement with any competitors or any understanding with any competitor based upon the statistics furnished by The Cement Institute?

A. No, sir; none whatever.

Q. Now, has your company ever concerned itself with cement statistics for districts outside of districts 1 and 2?

27407 A. No, we are not interested. I think that I get the shipping statistics for western Pennsylvania and Ohio, but that is a territory that is immediately adjacent to us, and also some of our stockholders live in Pittsburgh and I like to know what is going on out in western Pennsylvania, and in that territory for my personal information as much as anything else, but no other districts.

Q. Since you joined the Keystone Company have you ascertained whether or not it has increased the proportion which it gets of the total annual business in districts 1 and 2, Mr. Scott?

A. Yes, sir; we have increased the percentage of business from the time we started.

Q. How much?

A. We have had only two years in the last eight or nine years where we have not shown an increase over the previous year; that is, percentage relation I am speaking of. I think that our—we are doing about 4½ percent of the total volume in districts 1 and 2 now, where we were around 3.1 or 2, something like that, in the early days of the Keystone Company.

Q. What is that in terms of barrels, Mr. Scott, in the increase?

A. Well, that, as a matter of fact, is hard to answer. I can give you our barrels for those respective years, some

of the years in which we may have shown a percentage increase of the total, may have shown an actual
27408 decrease in the total volume that moved.

Q. Do you furnish the Bureau of Mines with figures on your production and shipments?

A. Yes, sir.

Q. And the same with capacity figures, do you furnish?

A. No. We give no capacity figures. I say "No." I believe that is the case. I think they do not ask for capacity figures.

Q. Do you furnish The Cement Institute with any information on the capacity of your plant?

A. No, sir; I think they do not ask for capacity figures.

Q. Do you furnish The Cement Institute with any figures on your production of shipments?

A. Yes, we give them monthly reports, the same as we do the Bureau of Mines, of both cement and clinker production and shipments.

Q. Do those figures show, Mr. Scott, what part of your shipments are standard cement and what part are special cement?

A. No, I think to the Bureau of Mines, yes, I believe we do report special cement; to The Cement Institute, no. There is no separation, I believe.

27411 Washington, D. C.,
November 28, 1939.

27414 HAROLD M. SCOTT thereupon resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Leisure.

Q. Mr. Scott, when we adjourned at the last hearing we were discussing Commission's Exhibit 3046-A, and I had addressed to your attention the paragraph in which the Keystone Company's name appeared, and we were also discussing Exhibit 3045-B, and I had addressed your attention there to the line in which the Keystone Company's name appeared (indicating).

It shows in that Exhibit 3046-A and B, Mr. Scott, that your company made shipments for the account of other cement companies in the years 1936, 1937, and 1938.

Is that correct?

A. Yes, sir.

27416 Q. Does your company use the statistics furnished by The Cement Institute to regulate your production?

A. Well, only in the sense that it is just one more indication of activity; but there is no—it is just more statistical data on which we may base our plans, that is all.

Q. Then, do you or do you not use it to regulate your production?

A. No, sir; we don't use it in the sense of any regulation.

Q. Have you ever had any contact with any of your competitors which influenced you in determining your rate of operations?

A. No, sir.

Q. Mr. Scott, do you use these statistics for anything other than these two purposes which you have already told us about?

A. You mean the statistics that we receive from The Cement Institute?

Q. Yes.

A. No, sir.

Q. Do you recall—did you receive any statistics from the Institute while you were not a member?

A. No, sir.

Q. Do you make any use of clinker statistics?

A. No. Oh, they are simply interesting as sta-
27417 tistical data, no value at all.

Q. I would like to call your attention, Mr. Scott, to another Commission's exhibit, Commission's Exhibit 230-L and N (indicating).

I notice your name appears in the third paragraph of this letter, dated January 2, 1936, being Commission's Exhibit 230-L, by the Nazareth Company, to Mr. John J. Porter of the North American Company, and your name appears in the last line of the first paragraph of Commission's Exhibit 230-N, and in this letter, dated December 30, 1935, from Mr. Porter, on the letterhead of the North American Cement Corporation, addressed to Mr. George Coffin, president of The Cement Institute.

(Witness examines document.)

Q. The body of those documents indicate that you were a member of the Committee on Statistics; is that correct, Mr. Scott?

A. Yes, sir.

Q. What was your function? What was the purpose of that committee?

A. Well, I see this letter speaks of a committee on reconciliation of statistics. I think the committee consisted of Mr. Porter and myself, possibly Mr. Robeson. There was a question of trying to develop some form, or forms, which would accommodate the numerous reports
27418 that we, as individual companies, were trying to make to The Cement Institute, and the Portland Cement Association, and the Bureau of Mines. That is, we were reporting similar statistics to all of them, and at that particular time I think Social Security records were coming in, and so on, and the accounting departments of most companies were pretty busy, and it was a question—that is my recollection of the work of the committee—it was a question of seeing that some one form, or report, covering the whole thing, be continued.

Q. Do you recall when that committee was appointed, Mr. Scott?

A. Well, I notice Mr. Porter's letter here is dated in December, 1935. It was probably appointed—well, I would say November or October before.

Q. November or October?

A. 1935.

Q. Let me see if I can refresh your recollection on that. The witness identified Resp. Ex. 1370 (formerly marked
27419 Com. Ex. 915 3W, 3X, 3Y and 3Z) as appearing to be a photostat of the minutes of the meeting of Districts 1 and 2 of the Institute held November 7, 1935, at which, among other things, this statistical committee, to which witness has just referred, was appointed. The date is November 7, 1935, and he notices that the members of the committee were Mr. Porter, who was trustee from District No. 2, and himself.

(RESP. EX. 1370-A, 1370-B, 1370-C, and 1370-D was offered and received in evidence.)

27423 By Mr. Leisure:

Q. Mr. Scott, in what area does the Keystone Portland Cement normally market its product at the present time?

A. In the 12 or 13 Northeastern States. We get down into North Carolina a little bit; I believe that might be the thirteenth State.

Q. Virginia,—do you get into Virginia?
A. Yes, sir; and Virginia.
Q. What about Maryland?
A. Maryland, Delaware.
Q. Do you sell here in the District of Columbia?
A. Only a small amount.
Do you want me to enumerate the States?
Q. Do you get to North Carolina?
A. Yes, sir; North Carolina.
Q. All of it or part of it?
A. Well, only in a small way.
Q. I do not think it is necessary to enumerate them. The Northeastern States, in addition to the ones you have named; is that it?
27424 A. Yes, sir.
Q. Some twelve or thirteen?
A. Yes, sir.
Q. Has there been any time since you have been with the Keystone Company that you sold in any other territory, other than this area that you have described?
A. No, sir.
Q. And do you have salesmen in this territory?
A. Yes, sir.
Q. All of it?
A. Yes, sir.
Q. Is your company one of the large companies, or is it a small company?
A. No, sir; we are a single-plant company, spoken of as a small company.
Q. As a small company. How many salesmen do you have?
A. I think we are traveling about thirty at this time.
Q. How does that compare, Mr. Scott, with the size of your sales force since you came with the Keystone?
A. It is just about double in number that we had in 1930.
27428 Mr. Wooden: We are not seeking in any way to show or infer the existence of a combination, alleged combination, by reason of any cost factors. We would contend that if and when the combination has been shown to exist by other evidence, direct evidence, that then there might be some bearing as to whether,—what the effects of that combination are.
Trial Examiner Norwood: As to whether trade was restrained?

Mr. Wooden: To what extent it had an influence upon some of these other factors, but it is not proof of the existence or non-existence of the combination itself.

27429 Trial Examiner Norwood: Wouldn't it be some evidence on the issue of whether or not trade was unreasonably restrained?

Mr. Wooden: Your Honor, under the Supreme Court decision in the Trenton Powders, the question whether the prices fixed by the combination were reasonable did not—are not relevant.

27430 Trial Examiner Norwood: Now, wouldn't you seek to draw an inference if you could show that the price was nine and ten times what the cost was, the great disparity between cost and price as evidence of unreasonable trade restraint?

Mr. Wooden: We are not endeavoring to show to Your Honor, and we have not attempted to show it,—we have not gone into the question of the relation between price and cost.

Trial Examiner Norwood: Might it also be argued that that showed the existence of combination?

Mr. Wooden: No.

27431 By Mr. Leisure:

Q. Mr. Scott, you have told us you have been in the cement business since, I think you said, 1905.

I would like to ask you whether the mills in the Lehigh Valley have sold in any wider territory than you have just described as your market area today?

A. Oh, yes. When I started into the business, Lehigh Valley cement was shipped out into the Middle West, into the South, to my personal knowledge, and I believe it was shipped probably to the Pacific Coast.

Mr. Wooden: Your Honor, I move to strike the testimony of the witness merely on the ground it is un-

27432 duly, unnecessarily cumulative, repetitive. We have had the same testimony from other witnesses of the Lehigh Valley companies, and Counsel for the Commission are perfectly ready to stipulate that that is the fact.

Trial Examiner Norwood: I do not see why Counsel for Respondents want to spin this thing out and go into those things which are not controverted, the conditions of the trade back on a certain date enabled the eastern mills to ship out to the Middle West, and further, and everybody

knows that, and why do we want to waste any more time proving that this particular member of the trade met those conditions, too, when you have shown that it is already done.

27433 Trial Examiner Norwood: Well, I think the time is very well spent if we can arrive at a definite understanding as to certain kinds of testimony here which appears to me to be absolutely useless as to its being excluded from now on.

The issues are clearer now, and there is a great deal of testimony in; there are very few disputed points in this case, and there is no excuse for going on.

Here last week we practically wasted a half a day of our time receiving testimony from one of your witnesses, all of which—practically all of which was contained in one of the exhibits. I verified it over the week end, over this last week, and I think there is no excuse for us to go on that way and waste time.

By Mr. Leisure:

27434 Q. Mr. Scott, the objection has been sustained to the question and answer as to the Lehigh Valley mills selling in a larger territory at one time than they sell now.

This record shows by one witness that the Lehigh Valley mills sold on a much wider territory at one time. Speaking of your own knowledge and of your own experience, can you tell me how those markets happened to be abandoned where the Lehigh Valley mills at one time sold on a larger scale?

A. Why, yes, sir; through a building of new plants into these western and southern, northwestern territories, the establishment at those plants of base prices, lower freight rates from those adjacent plants, and into the local territories, made it impossible for the Valley mills to—

A. (Continuing.) —to ship out there because of the high freight absorption, and the slower service from those mills.

By Mr. Leisure:

Q. Has your company, Mr. Scott, ever quoted or shipped cement to destinations in Indiana and Iowa?

A. No, sir.

Q. Has it ever shipped to South Dakota—

27435 A. No, sir.

Q. —since you have been with the company?

A. No, sir.

Q Have you ever declined to quote any State Government, or to any other customer, or business, within your normal marketing area?

A. I don't recall of any such business that we may have declined to quote on.

Mr. Leisure: I am now referring to Commission's Exhibit 1063-C, Mr. Wooden, from which it appears that this company, the Keystone, received an invitation to bid on a W.P.A. project, and that—

By Mr. Leisure:

Q. Well, first, let me show you this exhibit, Mr. Scott, and ask you whether or not you did bid on that project (showing to witness Commission's Exhibit 1063-C).

A. (Examining document.) No, sir; we did not bid on this project.

Q. Why not, Mr. Scott?

A. Well, this apparently requires delivery and prices at Rolling Fork, Miss., and we do not ship to Mississippi.

Q. What is your most important market, Mr. Scott?

Trial Examiner Norwood: Now, what is the point
27436 in showing that he did not bid there on a project in Mississippi?

Mr. Leisure: Well, I do not know what the Government is going to argue later, but they offered an exhibit here, Commission's Exhibit 1063-G, from which they may argue, as far as I know, that there was collusion in certain companies failing to bid on this project.

Trial Examiner Norwood: Did they allege that this company bid on that at all? Is there any claim or allegation, or any slightest suggestion that they bid on this particular project?

Mr. Leisure: Well, as a result of the collusion which they allege they say that State and Federal Governments, and quasi-municipal and municipal bodies have been unable to obtain competitive price quotations and prices.

Now, this witness, when he is having his day in court, is interested in showing that he was not a party to any such conspiracy.

27442 By Mr. Leisure:

Q. Now, as I understand you, Mr. Scott, the reason for your failure to submit a bid with respect to this Government Exhibit 1063-A to C was what (handing document to witness)?

A. Well, our freight rates to the State of Mississippi would be very high, and any price we might quote down there that would give us a reasonable mill net, or satisfactory mill net, would be so high it would not be interesting in any way at all. It is just out of our territory: We are not competing down there, that is all.

Q. And that is your reason for not bidding with respect to that project?

A. Yes, sir.

Q. Who in your company determines the policy, in so far as the market area is concerned?

A. I do.

27443 Q. Well, as to that policy, how do you determine whether you will solicit business in any given territory?

A. Well, that is limited by perhaps two or three factors. First, that we want to get a satisfactory mill net; second, that we are able to give competitive service at point of delivery, delivery time, as we reach out too far, particularly in the case of contractors your freight rates are so much higher than the nearby mills, contractors don't like the idea of laying out so much freight.

I would say it is a combination of all of those factors.

Q. Do you have any minimum mill net below which you won't take business?

A. No, sir.

Q. Do you prepay freight on any of your shipments, Mr. Scott?

A. Yes, sir.

Q. What does it amount to, if you know?

A. I believe on this year's distribution we will prepay freight on about 10 percent of our total shipments.

Q. And that would amount to what, if you know?

A. Something around seventy or seventy-five thousand dollars.

Q. Who are your competitors in your normal sales territory, Mr. Scott?

27444 A. Do you want the names of them, sir?

Q. Yes, if you can give us the names.

A. Well, we have all the plants in the Lehigh Valley, Universal-Atlas, Penn-Dixie, Lehigh, Alpha, North American, Florence, Vulcanite, Edison, Coplay, Nazareth, National, Allentown, Glenn Falls, Federal, Huron, Medusa, West Penn, Capital.

I think that about covers the group, and, then, of course, we run into the plants in the South as we come into Virginia and North Carolina.

Q. Is the Lone Star one of your competitors?

A. Yes, sir; Lone Star.

Q. What about Green Bag?

A. Green Bag; yes, sir; western Pennsylvania.

Q. Is Bessemer a competitor of yours?

A. Yes, sir.

Q. And Standard?

A. Yes, sir.

Q. What about Giant?

A. Giant.

Trial Examiner Norwood: Aren't all the other mills your competitors that ship into your territory?

The Witness: Yes, sir.

Trial Examiner Norwood: Now, what is the use of giving a detailed list one at a time, a spoonful at a
27445 time, on that?

By Mr. Leisure:

Q. Mr. Scott, in doing business in your market area, do you make prices, or do you not, which are competitive with plants that have lower freight rates than you have?

A. Yes, sir; we meet destination prices as we find them, and if the other fellow's freight rate is lower than ours we simply have to absorb the difference in the freight to arrive at at least an equal price.

Q. Now, as to these competitors that you named, Mr. Scott, do you meet their competition with respect to dealer business as well as federal and State business?

A. Oh, yes, all business.

Q. Does your company come into competition with imported cement, Mr. Scott?

A. Yes, sir.

27446 Q. Where?

A. Along the seaboard, the Atlantic Coast.

Q. And where, if at any place, is it, where you have the most foreign competition?

A. Well, I would say Boston and New York; some in Philadelphia and Baltimore.

Q. What proportion of your sales are affected by foreign competition?

A. Well, the metropolitan area of New York represents a big part of our distribution area, and also Boston. When I say Boston, I mean that surrounding territory and coming on down into Providence.

Q. What percentage—what amount of your competition?

A. Well, I would say perhaps 50 percent of our distribution is affected.

Q. Does your company—has it ever attempted to meet the price of imported cement?

A. No, sir; we have not been able to get down that low.

Q. Well, what happens? Why not?

A. Well, we have been forced down to meet the competition of American producers who have apparently sought, by lowering their prices, trying to narrow the spread between what might be their normal price level and the prices prevailing our foreign cement, that they could better hold their market, and, we, of course, have met the competition of American producers.

27447 Q. And, as I understood you to say, you have not attempted to meet the prices of foreign cement?

A. No.

Trial Examiner Norwood: He said that. There is no use of asking that again.

By Mr. Leisure:

Q. Well, now, you mentioned meeting the lower prices of some of the domestic manufacturers who had attempted to meet foreign cement prices in some way. What happens, Mr. Scott, with respect to your other customers when you quote a lower price at one destination?

A. Well, in the event—or, rather, in the case of Boston and New York, as you carry a particularly low price, trying to parallel or approach the competition of foreign, as it may come in there, that has the effect of spreading out into the surrounding territories, so that it affects not the city limits of New York or of Boston, but of a very large area around there.

Q. Have you ever considered abandoning the markets where you meet the competition of foreign cement?

A. No, sir.
Q. Why?
A. Because they are the key of our distribution.
Q. I think you told us you had only the one mill?
A. Yes, sir.
27448 Q. You say that these points hold the key to your distribution. Are there any new markets which you could develop?
A. No, sir. We have reached out as far as we can go. We are covering just as far as we can go now.
Q. What has been your experience with regard to the so called depressed prices that you described? Have you found special prices quoted at those seaboard centers which are normal markets for your company, of course?
A. I do not know that I get your question, Mr. Leisure. We found lower prices at these points from time to time; yes, sir; over a period of years.
Q. And I do not remember whether you referred to them as special prices or depressed prices. I was merely trying to pick that up.
A. Well, they were prices that would not necessarily figure back to a producer's mill, so, on that basis, I should call them special prices. They were lower, depressed prices, in the sense that they were materially below the preceding level of prices in those markets.
Q. And how did you learn what those depressed markets were, Mr. Scott?
A. Well, we would pick those quotations up immediately and as soon as any such prices came into the field we would hear from our dealers, from our salesmen
27449 promptly.
Q. You said a moment ago that some of your competitors had followed these prices down, or had quoted these low prices. Did you have any prior knowledge that these lower prices were about to be made?
A. No, sir.
Q. And I think you said you met them. Did you have anything to do with initiating the depressed prices in any of those areas?
A. No, sir.
Q. Has your company had any agreement or understanding with any other cement company concerning the prices which it has quoted in that so-called trade area?
A. No, sir.

Q. Now, covering all of the territory where these so-called special or depressed prices were quoted, have you had any part in instituting prices in and around New York or Boston or Baltimore, or any of the other points?

A. No, sir.

Q. Where these special prices have prevailed?

A. We have followed the competition as we developed it and found it.

Q. Did you, during the time of The Cement Institute, receive any notices of these so-called depressed prices?

Let me call to your attention Commission's Ex-
27450 hibit 308-B, see if that refreshes your recollection (handing document to the witness).

A. Yes, sir. Commission's Exhibit 308-B is a letter of November 16, 1935, advising of the filing of destination prices, Maine, New Hampshire, Massachusetts, and Rhode Island, which—

Q. I just wanted to know, Mr. Scott, whether or not you received notices from The Cement Institute.

A. Yes, I would say—

Q. In addition to those you picked up in the field as you described.

A. Yes, sir; I would say that we had at that time.

Q. Is it your policy to meet these so-called arbitrary prices wherever you find them, Mr. Scott, or is it not?

A. Why, yes, if they are not too low. I think we met them certainly on spot shipments. We may have elected not to take some contract business, or long-delivery business at some of the particularly low points.

Q. Well, "not too low," who determines that? What do you mean by that?

A. Well, I do. That is not too low for us.

Q. Did your company at any time decline to sell to cement dealers who traded in foreign cement, Mr. Scott?

A. Yes, sir.

Q. When was that policy in effect?

A. Oh, I would say 1933 or 4, possibly in 1935.

27451 Q. What happened? How did you come to adopt that policy, Mr. Scott?

A. Well, long before that while I was still with the Atlas Company, I had heard of the Lone Star in New Orleans, where they have a local mill, employed a certain policy along that line, and it seemed to work out pretty good for them down there, and I heard of the same effort

being made by them and by others in the East, as I say; perhaps I do not recall the exact dates, '33 or '34; and many of the dealers in handling foreign cement, one dealer would take it on and the other fellow had to take it on simply to match up with him, not in any desire that he wanted to handle foreign, but simply that he thought he had to be on a competitive basis for a certain class of business with his competitor, and as they took that cement on they were definitely becoming competitors of ours, and that particular time, '33 or '34, we were down at a pretty low level of business, ourselves, we were trying to keep our plants going on some sort of a basis.

Q. Do you have that policy today?

A. No, sir; I do not.

27452 Q. There is a Commission's exhibit here in the record, 1160-A, wherein it is stated that several domestic manufacturers advised C. H. Spring Co., Inc., they would not sell him because he was selling foreign cement (handing document to witness).

Will you tell us whether or not your company so advised C. H. Spring & Company.

27453 Mr. MacIntyre: Just a moment, Your Honor please.

We object to the question on the ground it is purely repetition. The witness has already answered the question to the effect that it was his company's policy not to sell dealers who handled foreign cement, or imported cement, and, of course, it is obvious he must have so advised the dealers.

Now, as to whether or not he advised one additional dealer, the Spring Company, is entirely unnecessary, as a matter of evidence.

Trial Examiner Norwood: The objection is overruled.

He has a right to bring out the facts as to this particular exhibit which you put in.

Go ahead.

A. I don't recall in the case of Spring, but if he was handling foreign cement we would at that time have not shipped him Keystone cement.

By Mr. Leisure:

Q. Do you know anything about a so-called blacklist that has been mentioned in the record, here, Mr. Scott?

A. No, sir.

Q. Did you ever see a so-called blacklist?

A. No, sir.

Q. Did you ever hear of one in the business?

A. No, sir.

27454 Q. Did any of your salesmen follow dealers' trucks to see where they were obtaining or delivering cement, Mr. Scott, to your knowledge—as far as you know?

A. Well, not that I know of. There would be no particular reason for them following trucks.

Q. Well, did you issue any instructions that salesmen should follow dealers' trucks, for that purpose?

A. No, sir.

Q. In the years that we were just discussing, Mr. Scott, how did the dealers who handled foreign cement compare with the dealers who did not, in number, as far as your company is concerned?

Trial Examiner Norwood: Just what do you want to show by bringing that out?

Mr. Leisure: Your Honor pleases, I want to show what the reason for his policy is, naturally. He has told us about certain policies that he adopted, and what he did, and I want to show the basis for it, to show the competitive situation.

Trial Examiner Norwood: Well, it has been explained at least half a dozen times.

Mr. MacIntyre: He has told us the reasons for 27455 the policies.

Trial Examiner Norwood: Yes, I cannot see why you want to show that by showing the proportion of dealers that did and did not, and, besides, I think it has been shown in the record numerous times.

Mr. Leisure: This witness has not been on the stand to testify about that at all.

Trial Examiner Norwood: No, it has not been shown by this witness.

Mr. Leisure: Sir?

Trial Examiner Norwood: No, you have not shown it by this particular witness, but it has been shown numerous times.

Mr. Leisure: Well, this witness is interested in what was done with his dealers, and not what other companies do with their dealers.

Trial Examiner Norwood: I understand that.

Mr. MacIntyre: Couldn't get anything out of him other than what has already been testified to. We have called a number of witnesses who testified on that—N. Ryan Company and Duffy Company, and some of those. We know who they are. For this witness to give his opinion as to how they compared with someone, would not help the record.

Trial Examiner Norwood: Read the question.

27456 (Last question read by Reporter.)

Trial Examiner Norwood: You may answer that.

A. Well, I don't recall in point of number, but there was a lot of foreign cement coming in there; there was an increase—

By Mr. Leisure:

Q. In other words, were the people who handled foreign cement few, or were they great, in proportion to your number of dealers, Mr. Scott,—that is all I want to know?

A. Well, there were comparatively few.

Q. That did not handle it?

A. Yes, sir.

Q. Which was greater, the ones who did, or the ones who did not?

A. The ones who did not handle foreign cement were greater in point of our total number of dealers.

27457 Q. Now, in carrying out your policy toward dealers in foreign cement, which you have described, did you give your salesmen any special instructions?

A. No especial instructions, only that we would not ship our cement to a dealer who was handling foreign cement, and it was up to them to keep us advised, as to what dealers, or who were handling what cements. That is nearly standard instructions, at any rate, to keep us informed of what cements they are handling, whether it is foreign or domestic.

Q. How long has that been a salesman's practice, to your knowledge?

A. That's always been their instructions; we want to know what is going on in the territory.

Q. Did your salesmen make any reports to you, Mr. Scott, concerning dealers that they found handling imported cement?

A. Yes, sir.

Q. Did you receive any reports on that subject from the salesmen of any other manufacturers?

A. No, sir.

Q. Well, now, having received a report from your salesman, or from your dealers, that one of your
27458 customers was stocking foreign cement, what happened? What did you do?

A. Well, if he sent us in an order, then, for a shipment of a car of Keystone or Velroca, we told him we would not ship him while he was handling foreign cement.

Q. Did that end it, Mr. Scott? Did you take any other measures against him?

A. No, sir; not at all.

Q. In what areas was that policy of yours effective?

A. Well, where the foreign cement was coming in, which was principally around Boston and New York, that particular time; there was very little, if any, coming in anywhere else; may have been some down around Providence.

Q. Well, now, did you, in adopting this policy and using it, Mr. Scott, intend, or did you understand that you were boycotting any dealers during the time you had it in effect?

A. No, not at all, simply a question of not wanting to help a competitor, as it were, and we regarded a man handling and pushing foreign cement as a competitor, taking away work from our workmen, and simply a question of a matter of choice of customers. We did not want to—

Trial Examiner Norwood: Now, you have explained that, Mr. Scott, once before, didn't you?

The Witness: I don't know, sir.

27460 Q. You told us that your salesmen reported to you in regular routine way the customers who were selling—the dealers who were selling foreign cement. I neglected to ask you whether or not your dealers also reported that fact.

A. Yes, they did.

Q. Do your salesmen make reports such as you have described, Mr. Scott? Can you tell us whether or not they did in territories not affected by imported cement?

A. Oh, yes, that is their regular daily town report, of their calls and visits on dealers, what they are handling, what brands they are handling, and so on.

27461 Q. In your experience, how long has that been your regular practice?

A. That's always been the case.

Q. Does The Cement Institute have anything to do with your policy toward dealers who handle foreign cement?

A. No, sir; nothing whatever.

Q. Do you know, or did you ever hear of any instances where The Cement Institute took any position whatsoever in this matter of what dealers you should sell and what dealers you should not sell?

A. No, sir.

Q. As far as you know, were any of your salesmen ever told that The Cement Institute had anything to do with the policy of not selling to dealers who handled foreign cement?

A. I am sure our salesmen were never told that.

Q. I want to call your attention to a Commission's Exhibit 1160-E, F (indicating).

Do you remember the testimony of Mr. Ray concerning this exhibit, Mr. Scott?

A. This is a letter about the Watertown Builders' Supply Company.

Q. Yes. Who is Mr. Power?

A. Mr. Power is our—he has the title of district sales manager in Boston, one of our salesmen there, head salesmen.

Q. How long has he been with your company?

27462 A. Not very long. I would say about five years, perhaps six years.

Q. Was the Watertown Builders' Supply Company one of your dealers at that time?

A. Yes, we have sold the Watertown Builders' Supply Company for some years.

Q. What were Mr. Powers' instructions concerning this foreign cement situation, if you know?

A. Well, his instructions were just the same as any other one of our salesmen, that we would not ship to dealers who were handling foreign cement.

Q. You said he was new with your organization.

A. Yes, he had only recently come to us. I am saying "recently." I am thinking of these dates here. He had been secretary of the New England Dealers' Association.

Q. Well, do you know anything about his relationship with the Watertown Builders' Supply Association?

A. Well, he has always been very friendly with them because he has known them a long time, and was secretary of their association.

Q. Well, did you ever instruct him to obtain proof, or did he ever obtain such—receive such instructions from your company to the effect that the Watertown Builders' Supply Company was not purchasing from Jenney & Lux?

A. No, he had no particular instructions, any
27463 different from any of the rest of our men.

Q. Mr. Scott, did you ever give Mr. Powers, or any other salesman, instructions to obtain proof that a dealer had discontinued the purchase of imported cement before you would sell that dealer?

A. No, it was up to the salesman to give us his own assurance.

Q. Did you ever see any statement from Jenney & Lux, Inc., to the effect that Watertown Builders' Supply had stopped purchasing cement from them in July, 1933, as referred to in that Exhibit 1160-E?

A. No, this is the first I have ever seen any of this.

Q. Did Mr. Powers ever turn in any such information?

A. He did not, that I know of.

Q. Did your company ever have any agreement with any other manufacturer to watch Jenney & Lux?

A. No, sir.

Q. Did the Keystone Portland Cement Company have a stock of cement in Brooklyn in July, 1935?

A. Yes, sir.

Q. For what purpose?

A. Well, we had put a stock of cement in there to parallel the competition of the other domestic companies who had established stocks there, and which were put in in turn to compete with foreign cement, foreign
27464 cement being carried on some of the public docks there in Brooklyn.

Q. Well, how did you learn that your competitors had established these stocks in Brooklyn?

A. Well, through general information in the trade, from the dealers, and from our salesmen, and I am inclined to think that there was some filing—that was 1935;

I think probably there was some filing with the Code Authority.

Q. Are you referring to Commission's Exhibit No. 210-H, Mr. Scott?

A. Yes, sir.

Q. In the notice that you received that you have described, was the name of the company given in the notice from The Cement Institute?

A. I do not believe so.

Q. What did you understand at the time,—was it or was it not a continuation of the price filing carried on by the Code Authority?

A. Do you mean this filing at that time?

Q. Yes.

A. Well, I would say it was just a continuation of what was carried on then, but the knowledge of the establishment of the stocks were very general in the trade there. You could not disguise that stock of cement and flock of trucks coming up to the cars and boats. I think North American and Lone Star had boats in there, came
27465 down the Hudson River, and others had rail shipments in there.

Q. To whom did you understand these notices went, Mr. Scott, from The Cement Institute,—these filings?

A. Well, to the—I would say, why, to the member companies in Districts 1 and 2.

27466 Q. Well, now as to your establishing a stock there, however you did it, whether you did it by rail or by water, did the terms and the conditions affect your delivered prices f.o.b. cars at the dealer's siding in this area?

A. No, sir; we continued to quote our carload price for deliveries into that area which would cover, well, any carload shipments that the customer might want to take in. These lower prices applied only for stock at the—for shipments out of stock at that particular Brooklyn location.

Q. Well, why didn't they apply to the other business, Mr. Scott?

A. Because we were trying to—well, in our case we were trying to parallel the competition of the domestic producer which was in turn based on the Brooklyn stock of imported cement.

Q. And your reason for not going beyond it was that the business was too high or too low?

A. No, that the competition of the foreign ce-
27467 ment did not apply on carloads away from the immediate location, and also on our carload shipments we would be making shipments of specially tested cement, of cement that we would carry in stock at the plant. Foreign cement did not contemplate that; therefore, this special Brooklyn stock which was put in there to parallel the foreign competition was made just as closely as we could, sold on the basis of foreign cement.

27469 Q. Now, you have the Commission's Exhibit 210-G there before you, Mr. Scott. Did you attempt to meet that filing?

A. Yes, sir.

Q. I notice there with the same exhibit there is a series of notices stating further amendments and modification of that filing.

A. Yes, sir.

Q. Having to do with the competition that was put on at Brooklyn.

A. Yes, sir.

Q. Can you tell us whether or not Keystone met those conditions?

A. We did because it was a question of limiting the distribution out of these Brooklyn stocks. The business was moving at a fearfully low price. We did not want to spread any further than we absolutely had to to meet competition and maintain our position with our dealers and trade in that area.

Q. Did there come a time, Mr. Scott, when you withdrew your stocks?

A. Yes, sir.

Q. Can you tell us when? I show you Commission's Exhibits 434-N, 286-J, and 921-L, and 310-D, and ask you to tell us when and under what circumstances you did it.

A. Well, we found that the North American and the Universal Atlas, who were Hudson River shippers,
7470 and who were large distributors in that particular area normally, and the other boat stocks in there also, own this special Brooklyn stock, were discontinuing it discontinued, and, as I say, we did not want to sell one barrel more through the Brooklyn stock than we had to, so, then, we promptly discontinued, also.

The witness identified Resp. Ex. 1372 as a multigraph

copy of a letter of announcement Keystone sent out to dealers advising them of the discontinuance of this Brooklyn stock; RESP. EX. 1373 as a carbon copy of a letter sent out by Keystone's assistant sales manager in Philadelphia to salesmen who work in that area, advising them that they were discontinuing.

27471 (RESP. EX. 1372, and 1373 were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Scott, did you have any agreement or understanding of any kind, with any of your domestic
27472 competitors regarding the establishment or discontinuance of these Brooklyn stocks?

A. No, sir.

Q. Has your company done anything since December, 1935, with reference to meeting the competition of foreign cement?

A. No, sir.

27473 By Mr. Leisure:

Q. Did you meet the— In addition to that, did you meet depressed prices put in by domestic corporations in December of 1936?

A. Yes, sir; we did.

Q. Does your company have any policy today with regard to competition with foreign cement?

A. No, sir.

Q. Have you had any negotiations or conferences with any importers of foreign cement, Mr. Scott?

A. No, sir.

Q. In connection with the competitive situation at seaboard centers?

A. No, sir.

Q. Do you know of any conferences between domestic producers and importers, to the same effect?

A. No, sir.

Q. Have you ever had any understanding or agreement regarding the prices at which imported cement would be sold, or the prices at which your cement would be sold, in the port areas?

A. No, sir.

Q. Does your company use the freight rate books of The Cement Institute?

27474 A. Yes, sir.

Q. In what way? What is your purpose in using them?

A. Well, it is a ready convenient form of getting as correct rate information—and economical.

Q. Do the Keystone salesmen carry the freight rate books?

A. Yes, sir.

Q. What use do they make of them, if you know?

A. Well, so they will have the rate information on their respective territories, to enable them to figure prices.

Q. Are your salesmen provided with any lists of distribution prices?

A. No, sir.

Q. How long has the Keystone Company used freight rate books of the Institute, Mr. Scott?

A. I think since 1931.

The witness identified Resp. Ex. 1374 as a letter
27475 by Mr. McConnell of The Cement Institute, dated April 29, 1930, addressed to Keystone; Resp. Ex. 1375 as a copy of a letter dated April 30, 1930, signed by C. F. Brooks, who is in the sales office of Keystone, to The Cement Institute; Resp. Ex. 1376 as a letter dated May 1, 1930, from Mr. McConnell of The Cement Institute; Resp. Ex. 1377 as a copy of a letter dated May 2, 1930, by Mr. Brooks to The Cement Institute.

Examination on Voire Dire by Mr. MacIntyre.

27476 The witness said that he thinks this is a complete chain of correspondence on that subject, as of that date. This happened before he came to Keystone. He was not with the company at the time. He merely found them in the files of the company. That is all that he found in the chain, as of that date.

27477 By Mr. Leisure:

Q. Mr. Scott, has the Keystone Company ever maintained any traffic department?

A. No, sir.

27479 Q. What freight rate information, prior to subscribing to the Institute freight rate service, did it have, then?

27480 The Witness: I believe that I have seen in the files of the company the invoice and paid bill for freight rate services from the National Traffic Bureau of Washington, D. C., which I believe was immediately preceding the rate services which the company drew from The Cement Institute.

27481 Q. Mr. Scott, before we adjourned at the noon recess we were discussing this National Traffic Bureau. Can you tell us how the information contained in the freight rate books in The Cement Institute compared with the information contained in the freight rate books of the National Traffic Bureau?

A. Well, I had some observation of the rate information in the National Traffic Bureau in the Atlas Company, and it was not a very efficient organization. The work was not well done. The Cement Institute is—well, they have taken their work seriously, the man in charge.

Q. Is the information which they purport to show, is it substantially the same or substantially different?

A. No, it is substantially the same information.

Q. Is there any difference in the use which you make of the freight rate books of The Cement Institute

27482 and the use that your company made of the books of the National Traffic Bureau?

A. No, just the same.

Q. Is there any understanding between yourself and your company, I mean, and any of your competitors regarding the use of the Institute freight rate books?

A. No, sir.

Q. With regard to some 30 years' experience in the cement industry, can you tell us, Mr. Scott, whether there is any difference in the method of quoting prices used by the Keystone Cement Company today and the method used prior to your coming to the Keystone Company?

A. No, it is identical.

Q. What is your experience; do you consider that you can meet the prices of your competitors, or do you not, at destination without the freight rate books of The Cement Institute?

A. Sure, we could meet the prices without the freight rate books. It is simply a question of getting the necessary information.

Q. And how would you do it without the freight rate books?

A. Well, we would either get it from some outside rate bureau such as the National Traffic Bureau, or set up a traffic department within our own organization.

Q. What has been your own experience, Mr. Scott, with respect to the freight rate books of The Cement In-
27483 stitute? Have you or have you not found that they were any advantage or benefit to you?

A. Well, they are of a distinct benefit to our company, because they provide the rate information quickly, accurately, and economically. If we did not have them, as I say, we would have to have our traffic department, and that costs considerably more money than the subscription necessary for the freight rate books.

Q. I would like to take up a new subject.

Have you ever quoted the Federal Government, at any point, where land-grant rates were involved?

A. No, sir. There may have been some land-grant rates from somebody else's mill, but no land-grant rates from our plant.

Q. Has the Keystone Portland Cement Company ever solicited business in any territory where land-grant freight rates were involved?

A. I think there are some land-grant rates in Virginia from some of the producing mills, but—

Q. Well, take the places where you normally do business.

A. No, it doesn't figure in our operations at all.

Q. Then, will you tell us, Mr. Scott, whether or not your company has ever selected any route so as to deprive the Government of any land-grant rates, to your knowledge?

Mr. MacIntyre: If Your Honor please, we object to that.

27484 The witness has just stated that land-grant rates are not involved in any of his operations, and, therefore, it seems to me it is useless to ask him whether or not he has done something with something he has never used.

Trial Examiner Norwood: Yes, I do, too.

Mr. Leisure: I would not have asked that except for the witness' statement about the Virginia territory. He had already said that that—

Trial Examiner Norwood: How did you arrive at these prices in this Virginia territory when you knew you were bidding against companies who would use land-grant rates?

Did you have to take the land-grant rate into consideration?

The Witness: No, we didn't use the land-grant rate at all, Your Honor.

Trial Examiner Norwood: You just found out the local price?

The Witness: We found out the price that the competition had quoted on previous lettings.

Trial Examiner Norwood: Yes.

The Witness: And apparently figured back to land-grant rates. I think possibly the officer in charge may have said that the award was made on that basis, so if there was any other letting came on a week or month later we quoted
the price that the lowest price had been quoted at
27485 in the previous letting.

Trial Examiner Norwood: I see.

The Witness: Without respect to any land-grant rates. We didn't figure it in. We have no records of any kind on land-grant rates.

Trial Examiner Norwood: Well, I think that answers your question.

By Mr. Leisure:

Q. Then, do I understand that you do not use the land-grant rates in any way, Mr. Scott?

A. That's right.

Trial Examiner Norwood: Yes.

The Witness: Not at all.

Q. Can you tell us whether or not any considerable number of your sales as to total amount is made through your dealers, Mr. Scott?

A. Yes, a very substantial part of our business goes through dealers.

Q. What has been your experience, as far as your single company is concerned,—do they or do they not—the dealers, I mean—perform any service for you?

A. Oh, the dealers are very necessary in the distribution of our product. Portland cement, in the last essence,
is a raw material, and, of itself, we cannot accom-
27486 plish much with it in the way of building, and a
building material dealer assembles cement, and
gravel, lime, plaster, and so forth—

27488 Trial Examiner Norwood: What service they
perform for you, if any.

Mr. Leisure: That is what he has been telling us.

The Witness: He assembles Portland cement with sand, gravel, and other building materials, so that the ultimate consumer can go ahead and build his building, whatever it may be, and if we didn't have the dealer we would have to perform that service ourselves.

Trial Examiner Norwood: Yes.

The Witness: (Continuing): Either with yards, or warehouses, or outlets of some kind.

Trial Examiner Norwood: I think you have answered it.

27489 Q. The kind of business that you have just been describing, is that the principal part of your business, or is the principal part the other more spectacular work that we have had here in the record, such as building dams, and that sort of thing?

A. I believe the major part of our distribution is through dealers, and is made up of the 101 little jobs here, there, and somewhere else, and not just the occasional big job that we may serve.

Q. What has been your experience with your own company with respect to whether or not the dealers affect your volume of business as to even distribution throughout the year; do they have any effect on that?

A. Yes. Your dealer distribution is the steadier, where a concrete road job will spurt out in the summer months and then it is over with, the dealer is serving 12 months out of the year, giving us a steadier shipping schedule.

Q. How many dealers market your product?

A. About 800.

Q. And is that the same or more or less than when you came with your company?

A. That is materially more than when I came with the company.

27490 Q. Has the Keystone Company ever used any distributors?

A. No, sir.

Q. And other than these dealers that you have mentioned, is there any other middle man between the Keystone Company and the user of cement?

A. No, sir.

Q. Well, now, as to the word "dealer," when you speak of a dealer do you have some concept of the qualifications that a dealer should have?

A. Yes.

Q. What has been your practice with regard to that,—what qualifications do you look for?

A. Well, we would consider a person or a firm who had warehouse facilities, rail facilities, take in carload lots, teams, and trucks, and enough money to finance the business, and to give us this service that we need.

Q. And how long have you taken that position?

A. Well, that has always been the case with the Keystone Company.

Q. Well, you say that the Keystone Company— Did you have any concept of what constituted a dealer prior to coming with the Keystone Company?

A. Yes, I should say exactly the same ever since I have been in the business.

Q. Have you ever been influenced, Mr. Scott, by
27491 any of your competitors as to whether or not you would sell anybody as a dealer?

A. No, sir.

Q. Who determines whether, in respect to the dealer, he has the requirements that you have described which you desire?

A. Our sales organization.

Q. Do they have any instructions on the subject,—your salesmen?

A. Only of a general nature, such as I have described.

Q. Let me call your attention to a Commission's Exhibit, 832-C; do you recall having written that?

A. Yes, sir; I recall writing this letter.

Q. What were the circumstances under which you wrote it, Mr. Scott?

A. Well, this letter was written May 2, 1935, and is addressed to Mr. Raeder, and is signed by myself as trustee of District 1 of The Cement Institute. He had written me that Mr. Chaffee, who was a retail dealer in Buffalo, and whom I have known for many years,—played a lot of golf with him,—Chaffee was apparently doing something or other for the Builders' Supply Association, or their Code Authority at the time, and I would be glad to render any service that I could to Mr. Chaffee at any time. We sell him an occasional car of high early strength now; do not get much regular business from him.

27492 Q. Are you interested in whether or not your dealers are members of any dealers' association?

A. No, sir.

Q. Has membership in such an association ever been one of the requirements of your company to become a dealer?

A. No, sir.

Q. Has The Cement Institute ever had anything to do with whether or not you sold a man as a dealer?

A. No, sir; not at all.

Q. How long have you sold cement direct to consumers, Mr. Scott?

A. Ever since I have been in the business.

Q. And what is your present attitude,—do you or do you not consider that your present marketing policy is to the best interest of your trade?

A. Well, I think it is to the best interest of our trade and our company.

Q. Does your company do business with contractors?

A. Yes, sir.

Q. You mentioned that you were selling more dealers than formerly. What about contractors? Are you
27493 selling today more contractors than when you came with the Keystone, also; more or less?

A. I would say more.

Q. Do you sell direct to the ready-mixed concrete plants?

A. Yes, sir.

Q. Can you tell us whether or not your company has ever made any arbitrary division of customers into classes you would sell direct, and classes you would not sell direct?

A. No, sir.

Q. You mean by that you did not, or what do you mean?

A. Your question was arbitrary division of customers.

Q. Yes.

A. No, we have not made any arbitrary division.

Q. Have you ever had any agreement or understanding with any of your competitors in regard to a classification of business?

A. No, sir; other than what might have been described in the Code during N. R. A.

Q. I notice, you say during N. R. A. I notice your name appears on this Commission's Exhibit 637-A to F, which appears to be minutes of meeting of members of Districts 1 and 2. If you will look at pages 3 and 4 I think you will find the subject of our discussion.

At the same time I would like to call your attention to Commission's Exhibit 557, pages 339 and 340 (hand-
27494 ing exhibit referred to to the witness).

With respect to those exhibits, let me ask you, during the period of the N. R. A., did you attempt to follow the Code of Fair Competition?

A. Yes, sir.

Q. For the cement industry?

A. Yes, sir; we understood that was obligatory.

Q. Well, now, the record shows here that as to Exhibit 557, which you have there, that a plan was provided for the marketing of cement.

A. Yes, sir.

Q. Was that classification of business novel or new, so far as your company was concerned?

A. Not at all, because it represented substantially what we were doing then, and what we are doing now.

Q. How did that classification compare with the classes of trade already recognized by your company in the marketing of cement—prior to the Code, I mean?

A. Well, without checking this back again, I would say they were substantially the same.

27495 Q. Now, as president of the company, to what extent, if at all, are you, or your sales manager either, aware of day-to-day prices that Keystone would quote in the various markets, Mr. Scott?

A. Well, I would say that we are not aware of the quotations that are going out every day. That is routine matter handled by the clerks in the sales offices, or the salesmen who may be out on the road.

Q. How do you determine the prices at which you will sell your cement at any particular destination?

A. Well, it is our custom to meet competition at destination as we find it. We have to do that or we cannot compete. We cannot get any premium for our product.

Q. How do you find what these competitive prices are at destinations?

A. Well, that is very simple, because the quotations are broadcast by various competitors. They are named on jobs as they come up; our salesmen pick up those quotations; dealers may send them in, or telephone us.

Q. Well, what happens in your sales office,—some customer calls—I mean the regular practice—when a customer calls and asks for a quotation at a certain destination?

A. Well, some clerk or sales correspondent in the sales office would give him the quotation. We carry a
27496 town card on each town that we are covering,—these various States that I have described. On the card we show the dealers in the town, we show the freight rates from the various producing districts that normally serve that particular territory, and if an inquiry comes in, quotation is taken off of that card and given quickly and easily to the customer inquiring.

Q. Covering how many destinations, roughly?

A. Oh, I imagine we must have four or five thousand destinations.

Q. Well, what happens, Mr. Scott, if you do not have the card for a particular destination?

A. Well, then we would locate the—oh, men having the destination in mind, the territory, then we would refer to our freight rates, either on the card or in our freight rate books, and work out a combination of the going base prices effective in that area, with the current freight rates, and quote the lowest combination of prices.

Q. Can you tell us whether or not your clerks have any available list of the last known bases in the territory you serve?

A. Oh, yes, our clerks would keep a list of base prices all the while, comparatively, in our territory—that is, in the Northeast.

Q. I want to call your attention to two more Commissions exhibits at this point, 747-D and 747-E (hand-
27497 ing documents to witness). Those have been identified.

Will you just tell us, again, what they are, briefly, so that we can continue?

A. (Witness examines documents) 747-D is a letter written by our company, under date of September 15, to the Rate Bureau of The Cement Institute at Bethlehem, asking about freight rates to Ticonderoga, N. Y. Do you want me to explain?

27515 Q. Mr. Scott, would you mind glancing at that Respondents' Exhibit 1384 for one more question?

A. Yes.

Q. I notice that the last price change there at Ticonderoga is July 7, 1938, and the last change prior to that was November 17, 1937.

A. Yes, sir.

27516 Q. When a price became, as noted, $2.68, do you know, and can you tell us the circumstances surrounding the price change of July 7, 1938?

A. Yes, sir.

Q. Well, first, did you initiate that price change?

A. No, sir.

Q. Who did?

A. The Allentown Portland Cement Company.

Q. When did you first learn about it?

A. I believe it was the morning of July 5. I was in Trenton, N. J., at the State Highway Department, and our Philadelphia office reached me by telephone there, saying that they had picked up quotations,—our salesmen had picked up quotations, and the dealers had phoned in, indicating a price move by the Allentown Company. Prices were up in some territories, and they were down in some territories, and I told them then to keep on checking, get all the information that they could.

I was in Philadelphia the next day, and by that time they had assembled quite a lot of quotations, prices that the Allentown Company had sent out, which indicated that they had put in a base at Evansville, which is their Lehigh Valley mill, 10 cents lower than we were then carrying on the Lehigh Valley base, and that Allentown had also instituted a price at their—a base at their Conshohocken mill just outside of Philadelphia. My recollection
27517 is that the base at Conshohocken was 10 cents, and is 10 cents higher than the Lehigh Valley or Evansville base.

Q. Does that cover the circumstances under which it was done?

A. Yes, sir.

Q. What did you do, Mr. Scott?

A. Well, I think we waited until about the—well, this would indicate the 7th (referring to Respondents' Exhibit 1384)—the second day, by which time we had found the Allentown Company, and several of the smaller companies, had sent out quotations meeting the reduced prices, and also meeting the increased prices which were in and around New York and New England. The Philadelphia prices in the Philadelphia area were all very sizeable reductions. Of course, we had to meet that right away, and then on the 7th of July, when I saw that this was a general move, we sent out quotations meeting these prices.

Before sending those out we also ran through, based on our making an estimate, as to what these new prices would mean in total net to us, or change to us, if our shipments in the following year went to the same destinations, and in the same volume as in the previous year, and the
27518 whole thing worked out to an increase of about 8 or 9 cents a barrel to us. As a matter of fact, that being a year ago, it has worked out about 7½ or 8 cents higher net to us than in the previous year.

Q. Mr. Scott, at the time you picked up these quotations, did you have any assurance that that would be the price—

A. The only assurance I—

Q. —that the competitors would follow?

A. No, I had no assurance that competitors would follow. The only assurance I had was that the Allentown Company had sent out those quotations, plus the several others that I had checked, who had sent their quotations out.

Q. Well, now, in checking those, as you have described, without specifically taking up other instances, can you tell us whether or not that procedure is the normal procedure that you adopt in instances where there is a general price change in the territory you serve?

A. That's right.

Q. Have you ever received any lists of basing points from your competitors?

A. No, sir.

Q. You spoke about certain basing-point information that you had. Who compiles or prepares it in your organization?

A. The chief clerk in the sales department.

Q. And you say he does not get the information from his competitors. Where does he get it from?

27519 A. He gets it off the quotations and the information that we pick up from the public bids that we see quoted.

Q. Have you ever received any lists of basing points from The Cement Institute?

A. No, sir.

Q. Have you ever given any of your lists to any of your competitors?

A. No, sir.

Q. When you were with the Lehigh Company some years ago, did you or did you not compile lists of bases?

A. Yes, sir; we did.

Q. Did you use freight rate books?

A. Yes, sir.

Q. Did you quote delivered prices?

A. Yes, sir.

Q. In determining what the base prices were at that time, did you discover what they were as you do today, or in some different manner?

A. Just exactly as we do today, and as we have always done.

Q. I would like to show you another Commission's exhibit, 1182-I (indicating). Do you recall, generally, the arbitrary prices in Westchester and New England?

A. Yes, sir.

Q. What is your recollection as to that, Mr. Scott, as to finding these so-called arbitrary prices?

27520 A. Well, I think that the Lehigh Cement Company instituted the arbitraries. I use the word "arbitraries,"—these special prices out through the territory adjacent to New York and Boston, and that would include Westchester County and this territory.

Q. Have you in issuing quotations dated them the day preceding the day on which you posted them?

A. Well, that is possible. The boys in the office may run their quotation forms through on the addressograph dating them today, for instance, and then find out that it is physically impossible to get the quotations out that same night, and mailed the next day, but they will bear the date on which they have been dated on the addressograph. That is possible.

27529 Q. I want to call your attention, Mr. Scott, to a Commission's Exhibit 267-B, and 268-F (indicating).

From this exhibit it appears that the Keystone Company had submitted a bid to the engineer's office at Eastport, Maine, on September 25, 1935, and that you bid a

27530 price of $3.05 per barrel f.o.b. cars Eastport, Me.—that is, in paper—10 cents cash discount.

Do you recall that transaction (handing document to witness)?

A. Yes, sir.

Q. Can you tell as whether or not there was any prior letting for cement at the office of U. S. Engineer's, Eastport, Me.?

A. What was the date of the one we are discussing?

Q. September 25, 1935.

A. I think there were previous inquiries, bids were taken on several small lots up there while Passamaquoddy was active.

The witness identified Resp. Ex. 1397 A and B as Keystone's file copy of quotation for 600 barrels tendered the War Department at Eastport, Me.; Resp. Ex. 1398
27531 as the specifications and provisions; Resp. Ex. 1399 as Keystone's work sheet of the sales clerk who prepared the figures for the bid. This paper includes the invitation as well as the bid.

Examination on Voir Dire by Mr. MacIntyre.

Q. In whose handwriting are the notes appearing on Respondents' Exhibit No. 1399, for identification, Mr. Scott?

A. That is the handwriting of Marshal White, chief clerk in our sales department at Philadelphia.

Q. And what is this word?

A. Northampton.

Q. "N-o-r-t-h" for Northampton?

A. Yes, sir.

Q. And what is that for?

A. Well, it is the Northampton base.

Q. Showing the base price from Northampton?

A. That is right.

Q. What is the other word?

27532 A. "Hudson."

Q. For showing the base point price at Hudson?

A. That is right.

Q. What connection, if any, did that have to do with the figuring of the price that you have just stated?

A. Well, that is the price we quoted, $3.04, I believe, is what we quoted, which is based on— Is that the price? Yes, sir, $3.04.

Q. Based on—

A. Based on Hudson, and these figures down here—

Q. As against $3.05 at the Northampton base?

A. That is right, a shrinking of—

Q. What is the handwriting at the bottom?

A. The handwriting at the bottom? Marshal White has checked up with the railroads to get the time of deliv-

ery. In other words, we could make fourth morning, or approximately three and one-half days' running time with the shipment, which I think were asked in the invitation, when we could make deliveries after given shipping instructions.

27535 Mr. Paulson: We are wasting time, Your Honor. I just want to say, because what the Commission contends is conspiracy in this case. Mr. Wooden has reiterated it several times recently, that they combine the use of base points with the concerted getting together of freight rates and use that, systematize the quotation of prices upon that basis, refuse to sell f.o.b. mill, and this man—this evidence is offered right now in Mr. Leisure's own statement to prove that is how they made up
27536 that bid, by using that system, just going around in circles, wasting time.

I say we might as well draw a line today now on that exhibit as some time later.

Trial Examiner Norwood: It is their contention that they make these bids and make these prices by the last prices that they find obtained at the particular destination.

Mr. Paulson: That is not what the exhibit shows, Your Honor. The exhibit shows the use of the Hudson base plus freight, and this man says he gets his freight from the freight rate book, so that he adds the freight to the base and gets $3.04 and uses that, and he has on that same paper calculated the freight and base price from another base, and he got $3.05, and took the last, the lowest combination—that is what our complaint alleges, that they always do that.

Mr. Leisure: All this argument amounts to,—the objection is that we did not use this bid as we say we used it. Well, now, we propose to show that we did use it in that way, and that we got our information as indicated.

27537 Mr. Paulson's argument simply says that we did not do at all what we say we did.

Mr. Paulson: You say, as I understand it, that you use the base plus the freight; is that what you intend to say from that exhibit, that you made your bid from the base plus freight?

Mr. Seeley: We haven't said anything of the kind. We are coming to that.

27539 (RESP. EXS. 1397-A, 1397-B, 1398-A, 1398-B, and 1399 were offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Scott, I notice in that exhibit, under paragraph 3 in the invitation, under heading "Delivery" it states: "The price shall include all transportation and other costs for delivery of cement f.o.b. cars or boat at Eastport, Me."

Did you comply with that requirement of the bid?

27541 Q. Did you comply with that requirement to bid, Mr. Scott?

A. Yes, sir.

Q. What price did you quote on the invitation?

A. $3.04 f.o.b. cars Eastport, Me.

Q. And what are those figures $1.25 and $1.14 on Respondents' Exhibit 1399, I believe it is, that Mr. MacIntyre asked you about?

A. That's the freight rates.

Q. Freight rates from where to where?

A. $1.25 from Northampton to Eastport, Me.; $1.14 from Hudson, N. Y., to Eastport, Me.

Q. And the $3.05 and $3.04, do they or do they

27542 not represent the sum of the base and the freight rates?

A. That's right, they do.

Q. Did you or did you not find that the $3.04 was the price that you bid?

A. Yes, sir.

27544 *Examination on Voir Dire by Mr. MacIntyre.*

Q. Do we understand, Mr. Scott, that this Respondents' Exhibit, for identification, 1401,—that is in response to the question Mr. Leisure put to you,—shows the method that you used just as Respondents Exhibit

27545 1399 shows the method that you used in arriving at the prices that were placed in the bids shown by Respondents' Exhibit 1397 and Respondents' Exhibit 1400?

A. Yes, understanding—

Q. Is that correct?

A. Understand, we had established that the mills in the Hudson District were quoting a base of such and such, and that is the competition we met.

Q. You proceeded, then, to use those bases?

A. That's right.

Q. And applied the freight rates in arriving at the de-

livered prices that you used in those two bids that I refer to?

A. Yes, sir.

Trial Examiner Norwood: It illustrates the same method, does it?

The Witness: That's right; the same bids.

By Mr. MacIntyre:

Q. Now, are these figures 1.25, under "Northampton," and 1.14 under "Hudson," on Respondents' Exhibit, for identification, 1401,—are they freight rates? Did I understand you to tell Mr. Leisure that?

A. I think so, yes.

Q. Did I understand you to tell Mr. Leisure that those were freight rates?

27546 A. Yes, that's right.

Q. Can you tell us where the information came from that was placed on there?

A. Where we get our usual rate information, the sales department; we get the usual rate information.

Q. Where is that?

A. Either off their card, or out of the rate book.

Q. And it is on a card that comes from a rate book,—I am trying to get at the source of your information here.

A. I have told you it comes from a rate book.

Q. Of The Cement Institute?

A. Yes, certainly; we use The Cement Institute's rate books.

27550 By Mr. Leisure:

Q. Mr. Scott, were you a trustee of The Cement Institute for District 1?

A. Yes, sir.

Q. How long have you been trustee?

A. I was elected in the fall of 1934 for a year, and Mr. Weaver was elected to succeed me, and then because of illness he did not qualify, and I continued on for several months, and then have been reelected since then.

Q. Well, then, what does that mean? How many terms have you served as trustee?

A. I would say I am in my fifth term.

Q. Do you know whether or not Mr. Weaver did serve as a trustee?

A. No, sir; he did not serve as trustee; since died.

Q. Have you ever been an officer of The Cement Institute?

A. No, sir.

Q. As I understand your testimony, you became a trustee during the N.R.A. Code period?

A. Yes, sir; I think November, 1934.

Q. Can you tell us whether or not the meetings of the board of trustees were held together of separate
27551 from the meetings of the Code Authority?

A. They were entirely separate.

Q. Did you ever attend any meetings of the Code Authority?

A. No, sir.

Q. How were you elected a trustee? What was the procedure?

A. I was elected by the mills operating in District No. 1; that is, District No. 1 as described by the Bureau of Mines, geographical districts.

Q. Did the trustees, while you were serving, have any power to enlarge the functions of the Institute?

A. No, sir.

Q. And what was your observation and experience,—did the board of trustees, to your knowledge, take any action beyond their stated function as set forth in its articles of association?

A. No, sir; they did not. Any enlarged activities would have to be approved by the membership as a whole.

Q. What were your duties, Mr. Scott, as a trustee?

A. Well, we simply functioned as the directors of a commercial company might function; looked after disbursements, approved the budgets—I think the budgets were approved, as a matter of fact, by the members; that was a budget referring to any local activity; but simply as a director of any commercial company might function.

Q. While you were a trustee do you know of any
27552 official meetings of The Cement Institute other than the meetings of the trustees?

A. No, sir.

27554 Washington, D. C.,
November 29, 1939.

27555 HAROLD M. SCOTT thereupon resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Leisure.

Q. Mr. Scott, I am going to try to save some time here, and before I have these invoices marked, will you just tell us whether or not these— Just tell us what they are, without going through all; just tell me what they represent. I think we can save some time (handing documents to the witness).

A Well, these are the canceled checks and vouchers of the Keystone Portland Cement Company, drawn to the order of the National Freight Rate Bureau, covering period 1929, some of the checks in 1930, I think.

Q. Then, let me ask you, Mr. Scott, whether or
27556 not your company, the Keystone Cement Company, subscribed to the National Freight Rate Bureau prior to your subscription to The Cement Institute Freight Rate Service?

A. Yes, sir.

Q. We were discussing, Mr. Scott, when we adjourned, your membership as a trustee of The Cement Institute. During the period that you were a trustee how was it divided, if you know?

A. Well, the board of trustees consisted of, I believe, 17 members, and about twelve of the members were from small companies; about seven of the trustees were from the large companies.

Q. And were you also a member of the executive committee?

A. Yes, sir.

Q. And how long?

A. I think some—well, I think the years 1935, 1936, and 1937.

Q. And were they elected or appointed?

A. They were appointed.

Q. How often did this executive committee meet?

A. I believe I recall only having attended about two meetings.

Q. Did the executive committee have any power to take action with respect to the functions of the Institute, Mr. Scott?

A. No, sir.

27557 Q. Under the N.R.A. Code, were there any restrictions upon the kind of prices that you could file?

A. No, sir; none whatever.

Q. As to your own company, during the Code period, if the price was filed with the Code Authority did you, Mr. Scott, feel that there was any requirement that you must quote the same price?

A. No, sir; quote any price we wanted provided we filed that price.

Q. Did the Code Authority in your experience ever attempt to control what price you would file?

A. No, sir.

Q. And as to the terms and conditions of sale, did you feel that there were any restrictions under the Code upon the terms and conditions you could file?

A. No, sir.

Q. Does your company file prices with The Cement Institute, or with any other organization, today?

A. No, sir; we do not.

Q. With respect to these meetings that you told us about of the trustees, was there ever any discussion at any of these meetings of the trustees that you attended with reference to trade practice rules?

A. No, sir.

Q. And, as to your own experience in connection
27558 with your own company, and with the Institute, has there ever been any policing of the industry's practices by The Cement Institute?

Q. And with respect to that, can you tell us whether or not, in your experience, there has been any occasion in which the big companies tried to coerce you; you have said that you were a small company.

A. No, sir.

Q. Now, referring to Commission's Exhibit 828-T, U,—from that exhibit, Mr. Scott, it appears that you were appointed a member of the committee on future activities; is that correct? Can you explain that to us?

27559 A. Yes, there was a committee appointed that was given that title. I think that was in the spring or early summer of 1936, prompted by the fact that one

of the large companies indicated that, in their opinion, the Institute should be abandoned, that the work for which it had been set up for functioning with the Government under the N.R.A. had been completed; but there was a difference of opinion—that is, some companies expressing a desire to continue, so that a committee was appointed, of which I was a member, to canvass the field to see whether there were any new activities, or what the field was open for the Institute at that time.

Q. Did you consider the Institute of any value to you at that time, and your Company?

27560 A. Yes, we did.

Q. What?

A. We were getting various services, freight-rate service, the statistical service which was coming through promptly, certain work having to do with labor problems that were becoming more acute then, tax committee in connection with refund of processing taxes, tariff committee, —so that we felt that there was some value in continuance of the Institute.

Q. Mr. Scott, does your company sell to the Federal Government, or to State Governments, on any different price basis from your commercial business?

A. No, sir. We quote them the same as we would any commercial business.

Q. Does your company make a practice of giving any quantity discounts?

A. No, sir; not at this time. We did in the early days of the company.

27561 Q. Well, now, what did you do about that situation, if anything, when you joined the company, Mr. Scott?

A. Well, I found certain special contracts which the company had entered into,—large quantities; the company was new, just getting started, they had no distribution, they needed to turn their cement over rapidly, and they had not built up a sales organization yet, so that they were making some special allowances to a group of large bookings, large contracts, applying on bookings of large volume.

As the contracts expired, I let them expire, and where they could be canceled, to cancel them as I got into the situation in 1931.

Q. Did you then, or did you not, eliminate the practice of quantity discount?

A. I did eliminate them, because we wanted to sell all our customers in the same given market and circumstances at the same price.

Q. Is the Federal Government a large or a small buyer, so far as your company is concerned?

A. Well, our direct sales, I would say, is a small volume.

Q. What percentage, if you know?

A. Well, perhaps less than 5 percent.

Q. Do you find any advantage in dealing with
27562 the Federal Government or your State Governments over your usual commercial sales?

A. No, none at all. Sometimes more difficult.

The witness identified Resp. Exs. 1402 to 1414 as typical letters received from Keystone's dealers and contractors.

Q. While they are looking at those, Mr. Scott, do you receive any requests for f.o.b. prices from your
27563 dealers, from your commercial customers?

A. Yes, our inquiries for prices, both dealers and contractors, are invariably asking for prices delivered at their destination where the cement is to be used, or where they want it shipped.

Q. Then, do you mean "yes" or "no," in answer to my question?

Trial Examiner Norwood: Read the question. I would like to hear the question read.

Mr. MacIntyre: Yes, we would like to hear the question read.

(Question read by Reporter.)

Trial Examiner Norwood: Do you mean f.o.b. mill?

Mr. Leisure: Yes, f.o.b. mill.

A. F.o.b. mill, no, we do not receive such inquiries.

Trial Examiner Norwood: Do you ever receive those requests?

The Witness: Your Honor, I don't recall ever having seen such an inquiry.

Mr. MacIntyre: I never did understand it.

Your Honor please, we object to this offer of Respondents' Exhibits 1402 to 1414, inclusive, on the ground
27564 that they are purely hearsay, written by people who have not been presented to us and subjected to cross-examination. As to what is meant by the letters, I believe that the offer—there has been no offer of proof,

however—but I believe that the offer has been made for the purpose of attempting to show that certain dealers on certain dates with respect to certain jobs had asked for delivered prices.

Now, the faces of these letters would appear to support such a showing, but, without an opportunity to cross-examine the writers of these letters the record is likely to be very misleading on that point, if the letters are allowed to go into evidence, because we do have information to the effect that many, many dealers in this country, and many other types of purchasers of cement, desire to buy in the most economical way, and if it is more economical—and it has been testified here that buying it f.o.b. mill and taking truck deliveries is more economical than rail deliveries in many instances—and under those circumstances they would take f.o.b. mill. For that reason we are likely to get in the record considerable misleading information in the form of these letters, in the form of hearsay, if you please. Without having an opportunity to cross-examine those writers as to whether or not they would have, in those instances, if they had the
27565 knowledge, that they could have gotten it more economically on an f.o.b. mill basis than on the basis they asked, they would have asked for it the other way.

For that reason, we object to the letters.

27566 Trial Examiner Norwood: And he has told us that he never has, in his experience, received a request from a customer for an f.o.b. mill price.

Now, why do you want to prove that, then, by considerable documentary evidence here which has been objected to, and which will add to the record here unnecessarily, until that is denied?

Trial Examiner Norwood: I think I will sustain the objection, and Counsel can keep these, and if it is denied that they have every received any requests from customers for destination prices, then I shall certainly receive these, because this would disprove that.

Mr. Leisure: Well, I offer to prove by the documents tendered in evidence that this witness received those documents from his trade, and I have selected—in order to cut down the record—I have selected just a few as typical of what he does receive in his trade. I have not at-

tempted to offer all of the letters that he re-
27567 ceived.

I offer to prove by those exhibits in documentary form the requests and the prices which he received from his customers on which his policy of quoting at destination is based.

Trial Examiner Norwood: Yes.

I do not think those documents contain any new information about his method, and we have had enough of that illustrated here, and the fact that they do request f.o.b. mill—f.o.b. destination prices—has been sworn to by this witness, and I do not think that there is any evidence, or will be any, to the contrary.

By Mr. Leisure:

Q. Mr. Scott, in dealing with your customers in commercial business, do your dealers handle only your brand or do they handle other brands of cement?

A. Well, generally, they handle more than one brand, more than Keystone.

Q. How many brands, approximately?

A. Well, I would say anywhere from two to fifteen or eighteen.

Q. And what has been your observation as to whether or not those dealers are familiar with cement prices generally?

A. Oh, the dealers are familiar with the prices.

Q. Now, the record here shows at some length,
27568 both in direct on the Commission's side of the case and in the defense side of the case considerable testimony about specifications. What has been your attitude with regard to that in your company, Mr. Scott? Do you favor a standard specification?

A. Yes, we definitely favor a standard specification because long time experience shows that there is a lot of good concrete structures standing on the type of cement that was prevalent over a period of, we will say, the past 25 years or 30 years, and some of—

Trial Examiner Norwood: I think if you will just answer his question without making any full discussion we will get along faster.

The Witness: I am sorry, sir.

Mr. Leisure: Doesn't Your Honor want to have the witness state what his reasons are for favoring standard specifications?

Trial Examiner Norwood: Not in answer to that question.

Mr. Leisure: I did not want to waste time to ask two questions instead of one.

By Mr. Leisure:

Q. Why do you favor standard specifications, Mr. Scott, standardization of products was the question?

27570 A. Well, a specification which is adopted and been proven in the field over a period of years in actual construction work, and proven satisfactory, is the one that we believe should be favored and continued rather than the adoption or introduction of a great many experimental specifications that represent the vagaries or theories of some group of engineers or engineer which has not had the benefit of practical experience in the use of cement over a period of time in showing real results.

Trial Examiner Norwood: Standardization,—does standardization make for lower costs?

The Witness: Yes, sir; definitely.

By Mr. Leisure:

Q. Do you, in your company, make cement to meet special specifications, Mr. Scott?

27571 A. We make a number of different types of cement as these specifications have been developing in some recent years; try to give service to the customer provided our bin room and so on will permit us to do so.

Q. Mr. Scott, the Commission has offered in evidence under Commission's Exhibit 2878-R, the last two sentences on the fifth page of a statement made by you before the Wheeler Committee. Will you look at those last two sentences and tell me whether or not those are your statements at the Wheeler hearing?

Trial Examiner Norwood: What Commission exhibit is that?

Mr. Leisure: 2878-R.

A. Yes, sir; I recall that statement.

By Mr. Leisure:

Q. And is Respondents' Exhibit 1415-A to S

27572 your complete statement on that occasion?

A. Yes, sir; it is.

Mr. Leisure: Your Honor pleases, the Commission has

offered two sentences out of this 19-page statement. I either want to offer it all in evidence, or the parts which I have indicated in red, which I think Your Honor will agree bear upon that statement.

27577 By Mr. Leisure:

Q. I want to call your attention to Commission's Exhibits 1339, 1391, and 1395, Mr. Scott (handing documents to witness).

Q. Those Commission's exhibits indicate that your company received invitations to bid f.o.b. mill price from the Procurement Division. Did you respond to that invitation?

A. We received this invitation to bid, but we did not bid or make any response; no, sir.

27578 Q. Prior to the time that you received this invitation in April and May, 1938, can you tell us whether it had been the custom for the Government invitations, which you received, to be in the form of a request to bid f.o.b. mill prices exclusively, or in the alternative?

A. Well, under practically all of the inquries that we received here for quotations in the Northeastern States, asked for prices f.o.b. destination. I think there may have been a few, one or maybe two departments, which asked fc alternate bids, that is f.o.b. destination and/or mill.

Q. Mr. Scott, will you say—you told us you did not submit, you did not bid. Will you tell us why you did not bid?

A. Well, referring particularly to Exhibit 1339, which was an inquiry for price on 3,000,000 barrels, I believe the quantity is given here, of cement from the Procurement Division, there were six or seven reasons why we decided to not tender any bid.

27579 In the first place, the quantity was not definite, and there was no guarantee under the specifications that if an award were made that we might ship more barrels or less barrels than we may have offered to quote on.

There is a specification here—I mean, the bid required that you submit prices on four different types of cement, types S.S.C. 191-A, type S.S.C. 201, type S.S.C. 206, and type S.S.C. 211.

Well, those are all different chemical compositions, have to be carried in separate bins, and so on.

This covered a period also, the deliveries would have been in the very heart of our shipping season, and to tie up any quantity, whether it was large or small, and to complicate it further by having four different kinds on which you simply had a call, you had no certainty that you were going to ship a barrel of it, would have made it very difficult indeed to handle not only that business, but also all of the business that we had under contract.

Now, there is another provision here,—I do not seem to find it for a minute,—on page 6 of the specifications a provision which states that in addition to purchases by the Procurement Division under this contract awarded that the cement manufacturer must be ready to furnish this cement under this same contract to any and all projects which are financed in whole or in part by the Federal Government at prices not to exceed those stated in the bid.

27580 Well, now, as we saw it, that might include State highway contracts which had been let, or were to be let, where federal aid was given; it might include F.H.A. mortgages; it might include loans from R.F.C., and so on. In other words, it would have made it a terrific confusion as between your contracts that you had on hand then, or the business that you would get later as to whether you were going to ship it or whether they were going to get the cement under this Procurement Division contract, or what not.

Then the provision also in the contract that the price must be offered f.o.b. the mill in the zone or sub-zones where your mill was located, well, we—and, further, in our case,—here on page 3,—we would have been confined to quoting under paragraph (b) of zone 3, Pennsylvania, Northampton County only, and it was and is our belief that if we are confined to making sales only f.o.b. our mill and denied or prohibited from absorbing freight so that we can meet competition of other producers as we reach out, that it would work a very great hardship on our company, and how far it might go is hard to tell, because our plant is located in the Lehigh Valley District where is a large concentration of producing units due to the fact peculiar stone location.

Well, that, to us, was one of the high lights in the objections to the proposal, and in studying the thing we had a

very thorough review of it with the officers of our company and our sales executives.

27581 We had a map prepared to show us what it would mean—that is, a map showing the rather small territory to which our freight rates are lower than competing mills, and if a fostering and an encouragement of a method of selling that would set up such a regimentation or result that we would be limited in that to that small area, well, we might just as well close the plant up.

Trial Examiner Norwood: Let him finish his answer.

A. (Continuing.) Now, there was one other point that occurred to us also in analyzing the inquiry. It was so obviously different in its form in the conditions in the proposal generally to anything that any Government department had sent out before, that we sort of got our ears up to see what it was all about, and wondered whether or not it was just what it was all about. We went through the thing, as I say, in conference among our officers and our sales executives, and as among ourselves we decided to not quote.

Well, then, it was a question whether or not we were being discourteous, which we did not want to be, if we failed to send a letter of explanation, so that I think two or three of us sat down to try to draft a proposed letter which we might send, and then out of the combined ef-

27582 forts select whichever letter expressed our thoughts the better, and we got all that stuff together. Well, then, having in mind that this represented a very important thing, an important decision, I wanted to share it with others in our company than those I had discussed, and as we were having a directors' meeting just prior to the date on which the bids were to be filed, I bundled the whole thing together and submitted it to our directors and showed them what our—this map and the proposed letter and explained the thing as it occurred to us, and they recommended and adopted,—I do not think we had a resolution, but I believe that the board was polled,—that we should not bid, and that we should not send any letter of explanation.

By Mr. Leisure:

Q. Had you any understanding with any of your competitors with respect to this action, in any way, Mr. Scott?

A. No, sir; none whatever.

The witness identified Resp. Ex. 1417 as a map
27583 which he submitted to the Board of Directors for their decision before he decided not to bid. That is the one that they acted upon in the meeting that he had described. The witness identified Resp. Ex. 1416 A to C as a copy of the minutes of Keystone's directors' meeting of April 13, 1938, which was held two days before this bid which "we" were discussing.

Q. You mention the freight rates of your company which were lower than competitors',—did you mean lower or equal to?

A. I mean lower or equal to; that's right.

27590 (RESP. EXS. 1416-A, 1416-B, 1416-C, and 1417 were offered and received in evidence.)

Q. Mr. Scott, I want to show you two more exhibits, 1394 and 1399, being also invitations by the Procurement Division to bid. Did your company bid on those occasions?

A. No, sir; we did not tender a bid under either one.

27591 Q. Why not? Take them up separately, please.

Trial Examiner Norwood: Were they the same reasons that you had for not bidding on the previous one?

The Witness: In the case of Exhibit 1399; yes, sir; it was the same reasoning.

In the case of 1394, that would apply, but, in addition, it covered deliveries in Ohio and West Virginia where we do not compete regularly, except very seldom.

27593 *Cross-Examination by Mr. MacIntyre.*

Q. Mr. Scott, have you just previous to, or since you began the course of your testimony here Friday, November 17th, examined notes or other documents for the purpose of refreshing your memory and recollection that you may give this testimony that you have given?

A. Well, I have discussed the case with our attorneys, and tried to register with them the thoughts that occurred to me that might be of interest to our particular company, having especially in mind that ours is a local prob-
27594 lem, and that they have been on the case a long time and are defending quite a number of other companies.

Q. My question is, though, have you, in that connection,

examined notes, written notes, of matters about which you have testified in the course of your testimony here?

A. Well, I have seen the papers which the Counsel had prepared in the case.

Q. Well, in what form are those papers? Are they in the form of questions and answers?

A. Well, in part, I think part of them may be.

Q. Containing answers such as you have given on the stand?

A. No, not necessarily.

Q. Containing questions to which you have answered since you have been on the stand?

A. Very largely; yes, sir.

Q. And also containing such information included in your answers since you have been on the stand?

A. That's possible. I mean—

Q. How frequently have you referred to such papers, Mr. Scott?

A. You mean since I have been down here before the hearing?

Q. Yes, in the course of your testimony.

A. As a matter of fact, very little.

Q. Well, can you give us some more definite idea as to how frequently and how much?

27595 A. Well, I discussed the case with our attorneys last night at dinner, and I discussed the case going back to New York a week ago Friday after the hearing, and I discussed the case coming down from New York. I came down with Mr. Seeley on the train.

Q. Well, my question, of course, is in what connection have you examined these notes and, if so, how frequently and to what extent?

A. Well, I have just covered it about the extent that it has been—that I gave any study to them.

Q. That is, you have covered the notes to the extent that you had given any study to the points—

A. Well, the question is, a question of reviewing the various thoughts and questions that might be asked, and what might be well cut out to save repetition that had been covered by the testimony of other companies, and that sort of thing.

Mr. MacIntyre: If Your Honor please, we ask that the notes to which the witness has referred, and which he just testified about, be furnished us for use in the cross-exam-

ination of this witness, so that we may know what relevant material has been eliminated by his Counsel from the information that related to his testimony.

Mr. Leisure: Your Honor pleases, that brings up the same questions that we had the other day.

27596 Trial Examiner Norwood: Yes.

Mr. Leisure: As far as I know, there is no occasion in any trial for the opposing side to have the trial brief of one side.

Now, I think to make notes, as Mr. MacIntyre puts it, material or relevant, there must be some showing that the witness has refreshed his recollection from those notes.

Trial Examiner Norwood: Yes.

Mr. Leisure: There has been no showing, so far, from this witness in any question that has been asked today that his memory was not just as good when he was on the stand, when he answered the questions, as his memory was when he was asked the questions in the original instance, and until there is some showing that the witness had to memorize or to refresh his recollection from any answer that he gave to us at any time, I do not think the question is even up.

As far as our trial brief is concerned, if we are going to be bothered with this all the time here, with our witnesses, perhaps we could follow some practice similar to that that is followed in some other departments with the Examiner and both sides having copies of the trial brief. I have no objection to anyone seeing our trial brief, but I do not think that Mr. MacIntyre has laid any basis for a demand of this character at all.

27597 Trial Examiner Norwood: Have you referred, since you began your testimony here,—have you referred to any previous answers you have made to the Counsel which have been written down?

The Witness: Well, no more than the preparation, I think, what he calls a trial brief here, sir, because whatever question—

Trial Examiner Norwood: Well, I did not ask you about that.

Have you referred to any previous statements that you have made to the Counsel which were written down, that is, since you began?

The Witness: To refresh my memory of those answers?

Trial Examiner Norwood: Yes.

The Witness: No, sir. I mean, after all, it is the cement business here that we are talking about, and that's—

Trial Examiner Norwood: No, I am just asking you about that one question.

Mr. Seeley: That settles it, Your Honor.

Trial Examiner Norwood: Whether some time he asked you the question that was to be repeated on the stand, and you made an answer which was written down, and then whether or not since you began your testimony here you referred to those previous answers?

27598 Mr. Leisure: He answered that.

The Witness: I say, I made no effort to memorize my answers.

Trial Examiner Norwood: I am not asking you that. I am asking you if, during the process of giving your testimony here, you referred to those previous answers that you have made to the same question, which previous answers were written down?

Trial Examiner Norwood: Now, I want an answer to that "yes" or "no," did you or did you not?

The Witness: Well, I would say no, to refresh my recollection.

Trial Examiner Norwood: I am not asking you if you refreshed your recollection. I am asking you if you read them at any time during the process here of giving your testimony?

The Witness: I would say no.

27599 Q. Well, before doing that, I would like to show you Commission's Exhibit 832-G, and ask you to state whether or not the names of the other persons appearing under yours at the top lefthand, the top of that page, are the names of trustees of The Cement Institute as of the date of that letter, April 24, 1935 (showing document to witness)?

A. Yes, I would say these were the trustees of the Institute at that time.

27600 Q. And many of them have continued to be trustees down to the present time, have they, such as Mr. J. J. Porter?

A. Yes, trustee—

Q. Mr. M. E. Munday?

A. I don't know about Munday.

Q. Mr. Alexander?

A. I think so.

Q. Mr. John Trainor, as of that day?

A. He is dead.

Q. As of that day he was trustee,—that is, at the time this letter was written?

A. Well, apparently, I would say he was.

Q. You recognize those as the names of trustees as of that date?

A. Yes, I think that is right.

Mr. Seeley: Excuse me, Mr. MacIntyre. You mentioned the date, April 24th. What is that, the exhibit number, please?

Mr. MacIntyre: Commission's Exhibit 832-G.

The Witness: What is the date of the letter?

Mr. MacIntyre: April 24, 1935.

By Mr. MacIntyre:

Q. I believe in response to a question to Mr. Leisure you stated that you recall two meetings of the board of trustees since you have been a member of it; is that correct?

27601 A. Well, there might have been three.

Q. Where were those meetings held?

A. I think there was one meeting held in Chicago, and I think one was held in New York.

Q. What was the date of the most recent one of those?

A. Quite some time ago, I should think, up to 1936.

Q. Up to 1936?

A. That is right.

Q. You have not attended any meeting of the board of trustees of The Cement Institute since 1936?

A. You did not ask me that question, sir. You spoke of the executive committee, I understood you to say.

Q. I was speaking of the board of trustees.

A. Can we be straight on that, then?

Q. Yes.

A. May I ask your first question there, when you spoke of one or two meetings?

Q. I understood you to reply to Mr. Leisure as to the number of meetings of the board of trustees you attended, and I understood you to say one or two, or possibly three.

A. I am sorry. I understood your question, the executive committee of the board of trustees.

Q. I am speaking of the board of trustees as such.

A. All right. I misunderstood the question.

No, the board of trustees, oh, I would imagine
27602 had, in 1935, perhaps two or three meetings; 1936, probably two or three meetings; 1937, not more than that, possibly only one; 1938, about the same; and I think I have attended one meeting of the board of trustees this year.

Now, those meetings,—correcting my answer there,—those meetings were held also in both New York and Chicago, my recollection, and I think you have minutes of the dates, and so on.

I am sorry I misunderstood your question.

Q. About this 1938 meeting of the board of trustees, you say you attended, can you tell me about what month that meeting was held, and where?

A. It is hard to be certain on that date, but I would guess that it was in November of 1938.

Q. Was there any meeting of the board of trustees during the first four months of 1938?

A. I do not recall any meeting in the early part of 1938.

Q. What about your executive committee of the board of trustees of The Cement Institute?

A. That is what I thought you asked me the first time. I do not believe I have attended over two, and certainly not more than three meetings of the executive committee.

Q. You did not have a meeting of that during the early part of 1938?

A. I believe that there was a meetting of the
27603 executive committee in 1938, which I did not attend. I think it was held in New York.

Q. About what date?

A. It was in the winter some time, probably in March, because I was away at the time.

Q. March, 1938?

A. I believe that is right.

Q. You can't tell me whether it was on March 30th, the day that the U. S. Treasury Department released this invitation to bid, which is in evidence as Commission's Exhibit 1389?

A. I am quite certain that it was not on March 30th.

Q. You can't tell how much after that date that it might have been held?

A. I can give you the exact date out of the files and I think you can get the exact date of the meeting. This is an executive committee meeting we are talking about.

Q. Of the board of trustees of The Cement Institute.

A. You can get that out of the files of the Institute, or I should have a copy of the notice in my files. I will be very glad to send you a copy if I have it in my files yet, as I think I should have.

Q. To your best recollection of this date, it was held on or about that time, in the spring?

A. I place it only, Mr. MacIntyre, in my mind here, with the fact that there was a meeting of the execu-
27604 tive committee. I think it was held in New York. It was held in the winter because I tried to get my vacation in the winter time, and I was away at that time. I am not certain whether it was March, it might have been February, but my recollection is it was March, but I can get you the exact date and call of the meeting if you would like to have it.

27607 Q. Well, do you recall in meetings of the board of trustees that such discussions arose; that is, meetings that you attended?

A. Well, I think that at some meeting of the board of trustees along in 1936, certainly after the subject of continuing the Institute was discussed, and when its activities were materially reduced, that the trustees would have touched on the discontinuance or would have ratified the recommendation that the general manager, Mr. Reiter, might have bought in.

Q. For the continuance of the freight rate bureau?

A. For the continuance of the rate work; that is right; because that was included as one of the activities, future activities that we thought that could continue on, and that served a real purpose.

Q. That is the purpose of continuing it of course were discussed at the meetings?

A. That is right. Well, now, what is that?

Q. I say, I understand you to say that the purposes of the continuation of that service were discussed at the metings of—that is, the 1936 meeting that you have described?

A. Well, I think I covered that this morning, but I am thinking now of the committee on future activities, and

after this committee put more study and thought on
27608 the thing we decided that the Institute should be reduced in its activities, and so on, and that we should continue freight rates, the statistical service, I think counsel service was included there; I do not know what all that covered, some other—well, that was about the net of it.

Well, now, that committee would report back to the board of trustees, and undoubtedly the board of trustees did consider that report and acted on it, as has been shown.

Q. That is including a discussion of the purposes for which the rate service would be continued?

A. There was no discussion of the fact that the rate service was some particularly outstanding important thing that must or must not be continued, no, not at all, because that was perfunctory, and we had that freight rate service, to my knowledge, going back, what—I believe into the days of the Cement Manufacturers' Profective case.

Q. Well, I am talking about the maintenance of such a bureau by The Cement Institute now, the present Cement Institute.

A. Yes, just a question of continuing that activity which was then current.

27609 Q. Mr. Leisure showed you Commission's Exhibit 1399, Mr. Scott, and, as the record stands, and my understanding of it is, you have stated the following to be the reasons for your failing to bid on that invitation: First, that it expresses an indefinite quantity; second, that it calls for four types of cement; third, that it was for shipments in the heart of your shipping season; and, fourth, that page 6 stated in addition to the purchases by the Federal Government you would have to supply all needs of contractors who did work which involved any federal funds; and, fifth, it called for f.o.b. mill prices in certain zones; and, sixth, that it was so different from anything that you had ever seen before that you wondered what it was all about when you got it.

Are those the reasons that you really meant to set forth as your reasons for not bidding on that invitation?

A. That was just exactly the reasons that I meant to set forth referring to what you describe as the Good Friday bid, which was the opening of April 15.

Now, later, Mr. Leisure handed me two other exhibits, and I think that is where these numbers were confused, and

I explained that in the case of the inquiry for Ohio, West Virginia, that we did not ship out there regularly, and so on, and in the case of this Exhibit 1399, the quantity is mentioned, and it is for one kind of cement, but the whole project, and the whole idea, seemed to us to be tied
27610 up with the Good Friday bid, and we simply applied the same line of reasoning.

Q. Well, of course those reasons could not apply then, if the quantity is definite, and if it did not call for types of cement, and if it was a very small quantity, and if it did not call for you to supply contractors doing work on Government forms, projects, and so on, so that would you please explain just what your reasons are, and enumerate them as to that particular invitation?

A. Well, it called for quotations f.o.b. point of storage or production, and we did not want to quote in that manner, and we felt that this proposal, under Commission's Exhibit 1399, was all part and parcel of the whole project, so that we were simply being consistent in our position in not bidding on either one.

Q. Now, you have given us two reasons as to this particular thing; or is that it calls for f.o.b. mill bids, and, second, you felt it was tied up with the previous ones.

Do you have any other reasons?

Mr. Leisure: He gave a third one, that he thought it was tied up with the previous bids.

Mr. MacIntyre: Those are two reasons.

Mr. Seeley: Read the answer.

Trial Examiner Norwood: Read the answer.

(Last answer read by Reporter.)

Mr. MacIntyre: Those are the two reasons, I submit.

27611 By Mr. MacIntyre:

Q. Now, I would like to know if he has any other reasons for not bidding on that particular invitation.

A. No, I don't think I have, without studying this all over again, the details of this, but that would be sufficient reason, in our mind, as to why we did not bid.

27615 HAROLD M. SCOTT thereupon resumed the stand and testified further as follows:

Cross-Examination by Mr. MacIntyre (Continued).

Q. Mr. Scott, when we adjourned just before noon we were talking about this invitation of the Government for bids under Commission's Exhibit 1399. I believe you were explaining your reasons for not bidding on that, especially reasons for not wanting to bid f.o.b. mill as asked for in that invitation.

I would like to ask you in that connection whether or not if you would have had the same attitude on that point if your competitors had been submitting f.o.b. mill bids to the Federal Government and to other customers just before you received this invitation?

A. What would have been my attitude if they had been quoting f.o.b. mill?

Q. Yes, as requested in that invitation.

A. Well, I do not believe it would have had any difference in my viewpoint, the way we regarded both this inquiry and the Good Friday April 15th inquiry.

27616 Q. Well, where is your competitive impact that you were discussing just as we adjourned at the noon hour, under a situation of that kind, wouldn't the competitive impact under such a situation have anything to do with your refusal to bid f.o.b. mill as requested in that invitation?

A. Of course, the competitive impact that we have experienced is at destination, that is where we meet competition.

Q. But I am putting a situation to you, Mr. Scott, here, where we have a request of the Federal Government to bid f.o.b. mill, and you find all of your competitors complying with that, what is your position on that? What would you have done with respect to that situation under those circumstances?

A. You mean that is a hypothetical situation, if I had found that?

Q. In part, yes.

A. Well, of course, if as I said this morning, be there any regulations or custom, or the great volume of competition, or there is a complete switch-around from the de-

mands of the trade as to what they are to do, which would say that the only way bids would be taken were f.o.b. the mill; if we were still in business by that time I imagine we would be following the competition; that is, we would be quoting f.o.b. the mill.

Q. You would do what your competitors did, then, in a case like that?

27617 A. Well, we would be in the cement business, and you could not readily convert the mill to some other use, so you would have to go along as to what was going on in the cement business.

Q. Now, then, coming back to the answer that you made just before we adjourned.

A. But I still—

Trial Examiner Norwood: Let him finish.

A. But I still hate to think of such a time as that happening, and I just can't conceive of it.

27618 Q. I am asking you, though, now, Mr. Scott, if that is not one of the reasons for you not submitting an f.o.b. mill bid in this instance?

A. Because our competitors are not bidding f.o.b. mill?

Q. Yes.

A. No, sir; that is not; that is not the case.

Q. I am talking about your competition in districts 1 and 2.

A. All right, there were very few inquiries received from the Government, and certainly none from any commercial buyers, asking for an f.o.b. mill bid, so that there was no occasion, nor did we sign any bids f.o.b. mill.

Q. Q. Can you cite us any instance where a competitor of yours in districts 1 and 2 has quoted the Government an unqualified f.o.b. mill price within the past six or eight years?

27619 A. My answer to that is, that so far as districts 1 and 2 are concerned, I don't now recall any requests for f.o.b. mill prices in that period, and I certainly don't recall at the moment any bids.

By Mr. MacIntyre:

Q. What was your—

A. (Continuing). And, more recently, there have been some inquiries come out, I think possibly it is the War Department, f.o.b. mill and/or f.o.b. destination.

Q. But you don't know of any bids f.o.b. mill even growing out of those?

A. Not in districts 1 and 2.

Q. No.

A. When I said I did know of some bids that had been made f.o.b. mill I was referring not to districts 1 and 2.

27620 Q. So that we have that straightened now.

Mr. Scott, you said just before we adjourned at noon that one of the reasons that you did not bid f.o.b. mill, and did not believe in f.o.b. mill prices, and you had so told your board of directors in this meeting that you described to Mr. Leisure on direct examination, was that it would restrict the selling territory of the Keystone Company; is that correct?

A. Yes, sir.

Q. That is, to a smaller scope than is now the case?

A. Yes, sir.

Q. Well, do you mean by that statement to impress upon us the converse; that is, to continue the practice that you are now engaged in permits you to carry your selling territory out beyond the confines of what it would be in a different practice?

A. I think I can answer "yes" to that question, if I understand it. That is, our solicitation today covers practically all of the twelve or thirteen northeastern States, as I showed on the map; if we are confined to the—let me call it freight areas—where our mill has the lowest rate, or equal rates, then, of course, that area is very much smaller, as is indicated.

Q. Now, I ask you if that is not the reason for
27621 your exclusively selling f.o.b. delivery point,—that is quoting f.o.b. delivery point?

A. No, sir; that is not the exclusive reason.

By Mr. MacIntyre:

Q. Well, is that one of the reasons?

A. That would be one of the reasons; yes, sir.

Q. Now, Mr. Scott, you spoke about the indefinite quantities that are specified in one of the Government invitations that Mr. Leisure called to your attention this morning.

A. Yes, sir; the 3,000,000 barrel one.

Q. Yes. You said that if you had bid on that you wouldn't know how much cement you would be called upon to furnish under the contract.

A. No. We wouldn't know how much we were to ship because it was an uncertain quantity. We could have bid on any part of the 3,000,000,—we could have bid on one barrel or the 3,000,000, but there was no certainty as to what the movement—how much of that quantity that we had bid on would have been shipped out.

Q. If you had bid on, say, 400,000 barrels, you wouldn't have been compelled to ship more than that, would you?

A. No.

27622 Q. Under the terms of the invitation?

A. That's right.

Q. And if you had received a contract on that 400,000 barrels, it would be more or less of a requirement contract, wouldn't it, such as the Government might have required up to that?

A. Yes, that's right, an uncertain quantity.

Q. Up to that?

A. They wouldn't have had to take a barrel under the contract, as we read the specifications.

Q. And you wouldn't have had to supply any beyond that, any figure?

A. That's right.

Q. Now, coming to your requirement contracts with block manufacturers.

A. Yes, sir.

Q. Aren't they just about in that same class, that they do not have to run any manufacturing operations that would require cement—that would result in their purchase of any from you—if they stopped their operations after entering a contract with you,—do they?

A. They are different in this respect,—we write a contract for the requirements of concrete products manufacturers' block plants, single plants, and so on, for a quarterly period. Now, that quantity that we set up is

27623 gauged and based on the quantity which we shipped them in the same period of the previous year, or the previous quarter, which, say, through the summer time, and it is a question there also of definitely tying that buyer up to us, and he comes pretty close to taking out those estimated quantities.

Q. If anything should happen to his sales force, or his financial state, of course, and he did not do the business that you would expect him to do, you would not get the business that you had expected, would you?

A. No, if he went out of business, or—

Q. In that respect the requirements contract in his instance is a little different—

A. Yes.

Q. Now, coming to another subject, Mr. Scott, that of standardization of specifications that Mr. Leisure questioned you about: He used the words "standardization of products" in one of his questions.

Do you know that all products, that is, Portland cement products of cement manufacturers, to be of the same
27624 quality, that is the various ones, or do you know them to be of different qualities?

A. Well, I think that—I should say that all the Portland cement that is offered for general sale on the present standard A. S. T. M. specifications is good cement. Now—

Q. In which?

A. Is good cement, and will do the buyer a good job. That is not referring to the special specifications but normal cement. Now, there may be, and are, I believe, some slight differences, one product may exceed those specifications by a little more than the other, but not a great deal of difference, certainly not as your concrete strengths would be developed, of over, we will say, a three to five-year period.

27633 Q. I believe you told Mr. Leisure that in some instances these dealers who handle your—buy cement from you—also buy cement from some five, ten, fifteen other manufacturers.

A. That is right.

Q. In most instances?

A. Not in most instances. Some fifteen, but not all fifteen. A man who is carrying fifteen different brands would probably be confined to a big city like New York or Boston.

27635 Q. What I am trying to find out, Mr. Scott, is simply this: Is this injury that you are suffering from competition of imported cement any different in degree or character than the injury that you are suffering from competition of your private—I mean domestic brands?

A. Very definitely.

Q. In what respect?

A. Because the foreign cement has and is coming in at such a low price.

Q. Sold at a lower price?

A. Materially so, and it can't come in unless such dealers make it possible for him.

Q. Are there any other ways in which you are injured by that competition, and you are not injured by your so-called domestic competition?

27636 A. No, I would say that's the principal point.

Q. Mr. Scott, I am showing you Respondents' Exhibit 1384 (indicating). I believe you stated that that is somewhat of a typical price card you carry in your files for estimates?

A. Yes, it is primarily a distribution card; that is, showing, the town, the State and county, and the population, the dealers in the town, and any other information, including freight rates and price quotations made in the town.

Q. Now, would you say that the difference in the price shown on that card for one date than that shown on the card for another date, in many instances resulted in changes in freight rates?

A. Some might be freight rates, yes.

Q. You cannot tell how many that have resulted from such an that card, can you?

A. No—well, I suppose a thorough analysis of the card might, you could figure that back.

Q. But there are a number of them that are the result of such changes?

A. Yes, that's right. This is running from 1931 to 1938.

Q. So it does not necessarily mean that you changed any other price, it just means that there have been changes in freight rates in some of those instances?

A. Why, I have freight rate information up here (indicating), and I have price information here (indicating on exhibit).

27637 Q. Which, of course, gives rise to changes in price when freight rates change?

A. That's right.

Q. Isn't it true, therefore, Mr. Scott, that many quotations—these so-called broadcast printed quotations that you send out to your trade at frequent intervals—reflect changes in freight rates rather than changes in any other factor, price factor, such as this one that Mr. Leisure showed you, that is Commission's Exhibit 1182-I, which is the change that took place July 5?

A. That was at Katoni; is that the one you are talking about?

Q. Well—

A. Well, Katoni—

Q. In late 1937, when that emergency charge went on.

A. That was a freight rate change; yes, sir.

Q. Many of your broadcast quotations reflect such price changes rather than any other price factor, do they not, Mr. Scott?

A. No, I wouldn't say many; I wouldn't say many.

Q. Well—

A. An occasional—

Q. There have been a number of them, haven't there?

A. Yes, because over the last five or eight years there have been changes in the freight rate structure, mostly upward.

Q. Now, I believe, Mr. Scott, that you told Mr.
27638 Leisure on direct examination that you had found the freight rate books of The Cement Institute, as used with your company, to be convenient.

A. Yes, sir.

Q. And that your salesmen used them in figuring prices, or have them so that they may use them in figuring prices.

I will ask you whether or not they are used in any other way by the officials and employees of the Keystone Company?

A. No, they are used primarily to give us the rate information from all producing sections, and territory, which we serve.

Q. That is, in the manner that you described on your direct examination?

A. Yes, sir.

Q. You know of no other way in which they are used by your company?

A. I think not.

Q. Mr. Scott, do you have a billing clerk? I believe you told Mr. Leisure that you had no traffic department, but you do have a billing clerk that takes care of your shipments?

A. Yes.

Q. That is billing out of shipments and placing on your invoices freight rates, and the like, does he not?

A. We call him a shipping clerk; we have a
27639 shipping clerk at the plant.

Q. He takes care of the freight rates?

A. Who prepares the bill-of-lading; that is right.

Q. After the freight rates that he places on those, does he check with the local railway agents, or railway employees of any description, in order to determine whether or not that those rates that he is placing on there are correct?

A. Well, he has a freight tariff there, or several tariffs, the Lehigh, New England Railroad, the Lackawanna, Central Railroad of New Jersey, Lehigh Valley, the Pennsylvania, Northampton & Bath, and if we are shipping a car to a given destination he checks his freight rate from Bath to that destination.

Q. From those tariffs?

A. From those tariffs, and the route that the cars shall take. Obviously that includes a lot of tariffs. You might stretch a point of imagination and call him a traffic man, I would call him a shipping clerk.

Q. You think he could be designated either, though, from the strict sense of the term?

A. Well, yes, because he has to do with traffic matters.

Q. How much more difficult, Mr. Scott, would it be for a clerk in your office to take the freight rates that he compiles from those tariffs and places on the bill-of-lading, to place them on these cards, such as Respondents'
27640 Exhibit 1384, than would be the duty of a clerk taking it from a Cement Institute freight rate book and placing it on a card?

A. Well, I would say that that would be considerably more difficult.

Q. Why would it?

A. Well, because it is harder to read a railroad tariff, to start with—

Q. Well—

A. —than it is an Institute freight rate book, or any of those other rate bureau books, and—

Q. Well, hasn't he already read them, though, and he has placed the rate—

Mr. Leisure (interposing): Let him finish.

Mr. MacIntyre: I know, but I want to ask a question here.

Mr. Leisure: No, I want him to finish his answer.

Trial Examiner Norwood: Go ahead.

The Witness: You are talking about a clerk in the sales office?

By Mr. MacIntyre:

Q. No, no.

A. Who posts these?

Q. No, I am talking about the man who makes up this card.

A. All right, he is a clerk in the sales office.

Q. Yes.

27641 A. He is a clerk in the sales office. Now, your question is, and he has a bunch of railroad tariffs, sure, he can dig out this information and put it on there. Now, you ~~are asking~~ me is it more convenient. It is definitely more convenient and quicker to copy it out of a rate book than it is to get it out of the railroad tariffs.

Q. Well, after your freight traffic man, or shipping clerk, as you call him, has already dug it out of the tariffs, and is using it on bills-of-lading to this destination, wouldn't it be then just as easy for him to hand it to your clerk to put it on the card as it is for your clerk to take a Cement Institute freight rate book and pore over it and select the rate and put in there?

A. Well—

Q. What would be the difference?

A. Well, a shipping clerk or traffic man that we speak of is at the mill. This is in our office in Philadelphia, and if we—your point is why not use the work that this shipping clerk has already done?

Q. Precisely.

A. And let him put it on there?

Q. Yes.

A. Well, then, you are simply leading to a formation of a traffic department. That could be done.

Q. Well, he has already worked out the rate that
27642 is used on the bill-of-lading, hasn't he?

A. We had a traffic department in the Edison Company, which is similar in size to the Edison; he had a traffic manager, so-called, and I think a couple of stenographers. We don't have that here. We have dispensed with that.

Q. Well, hasn't the man, though, that you term the shipping clerk—

A. Yes?

Q. —already figured out the rate from these railroad tariffs that apply between your shipping point to the des-

tination—in fact, every destination to which you have shipped cement from time to time,—he figures that out, doesn't he?

A. He does it, I think, each day, sir. I don't think he has a record like this. This is not kept at the plant office at all. This is—that's a sales record.

Q. Well, when he worked that out, and makes a record of it, for the bill-of-lading purposes—

A. Put it on a card.

Q. —couldn't he send it over to your office in Philadelphia?

A. Yes, sir.

Q. If it is done, how much more trouble would it be for the clerk over there to simply copy it off of that piece of paper and put it on this card, than would be the case of taking it from The Cement Institute book and putting it on a card?

A. Wouldn't be any more trouble.

27643 Q. Wouldn't be any more trouble?

A. No, sir.

Q. Then what advantage, if any, would there be if that were to be done than you would get from the use of The Cement Institute freight rate books?

A. Well, I think I mentioned that before. Your Institute rate book is a much more convenient thing to put in your pocket, if you are going out to the territory, somewhere or other, like the salesmen do; they have to carry either a printed list of delivered prices which might be changed from time to time, or a bunch of railroad tariffs, and I also say that this book is a very convenient form, and we quote that over a period of time.

Q. In addition to it being in a particularly good form to fit in the pocket of the salesman, fitting in his pocket, doesn't it also carry uniformity of rate such as is used by all other manufacturers? Isn't that a convenience, as well as being a particularly good form to put in the pocket, Mr. Scott?

A. Well, it would carry uniformity to those manufacturers that were carring that freight rate book.

Q. The same book.

A. Of course, they could have that same uniformity with the railroad tariffs in the old days in the Lehigh, and also—like in the Atlas Company, we had our own rate

books, had our own traffic department to supply that
27644 information, furnish it to our men, and so on, and freight rates were very incidental in our operations. Of course, they were not in existence in the early days.

27658 Q. Well, I am showing you now Commission's Exhibit 2895-A, which is one of the statistics sheets put out by Mr. Mallory, showing production for districts 1 and 2 over a seven-year period, and Keystone, under your mill key there 232,—that is correct, isn't it?

A. I think it is.

Q. Shows for an average of 9 years to have been 57.2 of its capacity; isn't that correct?

A. I have never seen this statement.

Q. Well, would you take issue with Mr. Mallory's statement as to what it had been produced as you reported to him in proportion to the production in shipments for the district?

A. I do not—I cannot reconcile those figures. I do not know what those figures are. Perhaps I can answer you, make it—get an answer in a different way here for you.

27659 Q. It shows this to have fallen behind the productive capacity four-tenths of one percent below that of the district, doesn't it?

Mr. Leisure: Well, just one moment. Perhaps there is some confusion. Mr. Scott did not say anything about productive capacity. He was testifying about shipments.

Mr. Seeley: That is what you are saying.

Mr. MacIntyre: He said productive capacity and production.

Mr. Seeley: No, he did not. You read the record again.

Mr. MacIntyre: Let the witness straighten the thing out.

Trial Examiner Norwood: Yes.

A. I do not know what these figures.

By Mr. MacIntyre:

Q. It goes on and talks about percent of shipments to clinker capacity, doesn't it, to individual mills and also to the district?

A. Yes—your question is, have we made progress?

Q. As against competitors in the district as a whole.

A. All right. I will say, if you are going into 1928, 1929 figures there, which means nothing because the plant

did not start until about July of 1928, and from then on it was two additional kilns, and all the incidental
27660 machinery were being added, so that you had construction and operation going on at the same time, very hard to arrive at anything like a potentiality of the plant in those early years; but from the time I have gone there, go back to 1931 up to this date, I believe that there were only two years when we have shown a smaller percentage of the going business. In other words, our rate of progression has been constant with the exception of two years.

Q. What years are those, Mr. Scott?

A. On a percentage of going business?

Q. What years are those?

A. That we dropped back?

Q. Yes.

A. I am sorry to relate that this year is one. I do not think we will show the same percentage relation this year that we did last, and I think it is 1935—it is either 1933 or 1935. I can give you those figures, sir,—be very glad to furnish them to you.

Q. Well, Mr. Scott, in order that you may be sure that we understand your explanation of your answer that appears on page 27407 that we have just referred to, you were referring to the total produced by you and your competitors in the district and not by the total consumed in the district?

A. I am talking about the total shipped.

Q. The total shipped?

A. That is right.

27661 Q. By you and your competitors?

A. That is right; total shipped.

Q. I just wanted it clear—

A. Yes.

Q. —what you meant by your answer.

A. Yes, total shipped.

Q. Do you mean by that, Mr. Scott, the total shipped by your competitors in the district, by those located within and without the district, or by shipped by your competitors in the district by your competitors located in the district?

A. I am talking about the shipments from the producing mills in the district. I do not care where it went.

Q. To points in the district?

A. I do not care where it went. It may have gone to Timbuctoo.

Q. But you are not including in that the shipments by mills into that district from outside?

A. I do not know anything about the shipments from the mills in other districts into what I would call our territory.

Q. Mr. Scott, when you say that there are especial applications of switching limits, or freight rates within switching limits of certain cities, how do you ascertain what those freight rates are and the limits of their applicability?

A. I do not know whether I have talked about switching rates.

27663 *Redirect Examination by Mr. Leisure.*

Q. Mr. Scott, Mr. MacIntyre asked you about foreign competition and asked you to explain what you meant by your statement on direct that you were to some extent injured by foreign competition, and then Mr. MacIntyre wanted to know what the difference was in the injury you received from foreign competition and the injury you received from domestic competition. As to that, let me ask you, do you meet the prices of your domestic competitors?

A. Yes, sir.

Q. Do you meet the prices of foreign competition?

A. No, sir.

27664 Q. Why not, Mr. Scott?

A. They have been down too low for us.

Q. Is that what you meant by the injury of foreign competition?

A. Yes, exactly.

27666 F. C. McKEE, being called as a witness for Respondents and being first duly sworn, testified as follows:

Direct Examination by Mr. Leisure.

27667 I am vice-president and sales manager of the West Penn Cement Company, having been connected with that company since it was organized in 1926. For 15 years prior to that time I was in the sand and crushed stone business with the Winfield Sand Company.

Winfield Limestone Company, and T. K. Morris Lime and Limestone Company, which were sold to the West Penn Company. It was a new company at the time I became affiliated therewith. I was not made sales manager until February, 1928.

27668 B. D. Phillips is president, but he is not familiar with the operating end or the marketing of cement. O. J. Binford is general manager and is familiar with marketing matters to a certain extent. C. A. Wilder is secretary and treasurer, but he is unfamiliar with marketing matters.

West Penn's principal place of business is in Butler, Pa., with a branch office in Pittsburgh, Pa. West Penn has one mill at West Winfield, Pa., but does not have any
27669 silos or warehouses. West Penn began operating in 1927 and at that time I was familiar, to a considerable extent, with the demand for cement in my area because I had been selling sand and stone to dealers and contractors, and I learned from them the cement situation and general conditions. West Penn has a capacity of 1,500,000 barrels per year. I prepared a sheet on which I ascertained the ratio of our plant production to our plant capacity.

The witness identified Resp. Ex. 1418 as a statement showing the ratio of production to plant capacity.
27670 It was prepared either by him or under his supervision and he could vouch for its correctness.

27672 (RESP. EX. 1418 was offered and received in evidence.)

Direct Examination (Continued) by Mr. Leisure.

Prior to 1928 West Penn only had a capacity of 750,000 barrels per year, but in that year it was doubled to the present capacity of 1,500,000 barrels per year. The shipments during the first nine months of operations from April 1 to December 31, 1927, were such that it indicated that an increase would be justified. Resp. Ex. 1418 indicates that the ratio of our production to our capacity in 1927 was 67.3%. The West Penn mill began shipping on April 1, 1927. The 67.3% figure is computed on a
27673 nine months' basis. Resp. Ex. 1418 also indicates that West Penn's ratio of production to capacity during 1928 was 47.2%. That figure was estimated on the

increased capacity which did not become available until fall. We did not have the benefit of our increased facilities during the entire year of 1928. I have ascertained how our shipment figures compared with the total shipment figures for our Bureau of Mines' district.

27677 The witness identified Resp. Ex. 1419 as a statement of shipments to West Penn's customers for the years 1927 to 1938 inclusive, showing total shipments, percentage of increase or decrease, also total shipments reported by the Bureau of Mines for District No. 3, with percentage of increase or decrease, and total of shipments. He testifies to the correctness of these [figures]. On the average approximately 40% of the total West Penn shipments were covered by specific job contracts.

27679 (RESP. EX. 1419 was offered and received in evidence.)

27680 By Mr. Leisure:

Q. Mr. McKee, are you a director in the West Penn Company?

A. Yes.

Q. What is the present capitalization of the West Penn?

A. $921,000 bonds; $500,000 preferred stock, $1,211,000 of common stock.

Q. Are any of the officers or directors of your

27681 company officers or directors of any other cement-producing company, Mr. McKee?

A. No.

Q. Is your company affiliated in any way with any other cement-producing company?

A. No.

27684 Q. Mr. McKee, you named Universal. What other companies?

A. Universal, Green Bag of Pennsylvania, Medusa at Wampum; Lehigh at New Castle; and Bessemer.

Q. What are the distances from these mills to your plant, Mr. McKee?

A. As nearly as I can remember from memory, the distances by rail, by existing routes, are as follows: West Winfield to Universal, 44 miles; to Green Bag, 45 miles; to Medusa, 80 miles; to New Castle, 89 miles; to Bessemer, 96 miles.

The latter three are figured via Pittsburgh.

Q. And are the distances you have given by rail?

A. By rail.

Q. What is the normal marketing territory in which you do business?

A. An area bounded, roughly, by Cleveland, Buffalo, Syracuse, Harrisburg, Baltimore, Washington, Charleston, W. Va., Columbus, Ohio.

27685 Q. I want to call to your attention a Commission's Exhibit 1063, and it appears from this Commission's exhibit that you received the invitation to bid from the Government (handing document to witness).

A. (Witness examines document.)

Q. According to Commission's Exhibit 1063, the invitation was to ship to Mississippi. Have you ever sold in Mississippi? Is it any part of your marketing territory at all?

A. No.

Q. Have you ever quoted or shipped cement to any points in Indiana?

A. Yes, we have shipped a few odd cars to some points in Indiana.

Q. But other than that you have not shipped regularly there?

A. No, no shipments to Indiana for over a year.

Q. Have you ever shipped to Iowa?

A. No.

Q. Have you ever shipped to South Dakota?

A. No.

Q. Now, Mr. McKee, in the territory in which you do normally do business, what mills do you compete with, other than the ones that are located—well, all of them, including the ones located there?

A. Well, the six I have already named, Alpha at
27686 Ironton, Alpha at Jamesville, N. Y.; Alpha at Martins Creek, Pa.; Alpha at—

Trial Examiner Norwood: Now, do you compete with all mills situated in the territory you have just named, and all mills who ship into that territory?

The Witness: Into that, yes.

27689 Q. In what States, Mr. McKee, is the bulk of your cement sold?

A. Pennsylvania.

27692 Q. Mr. McKee, in what market, if any, do you sell the largest amount of your cement?

A. Pittsburgh and Washington.

Q. Do you have any other large market comparable to that?

A. No.

Q. What is the next largest?

A. I would have to think in figures. That changes from time to time. There are several markets.

Q. Would Buffalo or Rochester be one of the markets that would be comparable?

A. Rochester might at certain times, but I would say smaller areas; it would depend on the amount of territory covered by markets; for example, the upper Allegheny River Valley, such as New Kensington, would be larger than Rochester, and it is nearer the mill.

Q. Do you have freight advantage or disadvantage, Mr. McKee, out of the mill?

A. To what point?

Q. To Pittsburgh, the principal market.

A. We have freight disadvantage to Pittsburgh.

Q. And how many salesmen do you have?

A. We have eight salesmen full time, and one part time who acts as traffic man the balance of his time.

Q. Do you confine your shipments within any definite limits?

27693 A. No, that depends upon a number of conditions.

Q. Do you have any definite territory beyond which you will not go?

A. That depends upon the mill net, the amount of available business, whether or not there is an old customer doing business there, our delivery time, and different factors.

Q. What determines, Mr. McKee, the extent of the territory in which you solicit business today?

A. Those factors that I have mentioned.

Q. Now, the term "mill net" has been used here a number of times in the record. What do you understand, what do you mean by the use of that term?

A. That is the amount that we have left after deducting from the destination price of a shipment of cement our freight rate and the cost of the package.

Q. In your practice is that your price?

A. No, our price is the destination price.

Q. Is your mill net the same as the net profit, Mr. McKee?

A. No, because from that mill net must be taken cost of production, overhead, and so forth.

Trial Examiner Norwood: Doesn't mill net include packaging?

The Witness: No, that has the package eliminated because it varies according to whether it was paper, cloth, or bulk.

27694 By Mr. Leisure:

Q. Well, then, what elements enter into whether or not you are making a profit—I mean, what deduction must you make to ascertain whether you are realizing a profit?

A. Do you mean deductions from the mill net realized? We have to deduct the cost of operation, administrative, financial expense, taxes, and so forth.

Q. In other words, manufacturing costs and overhead?

A. Yes.

Q. Do you include administrative expenses and finances, taxes, in overhead?

A. Yes.

Q. Do you have any minimum mill nets below which you will not go, Mr. McKee?

A. No fixed figure. It depends on these conditions I have mentioned.

Q. As to your market territory which you have described, has that market area changed since, say, 1927?

A. No.

Q. Well, then, are there any territories in which your company competed when it first started but which it has since abandoned?

A. There was a territory around Oswego, N. Y., to which we made some shipments which we no longer solicit business.

27695 Q. Well, then, I am not clear from your last answer, has there been any change at all in your marketing area since 1927?

A. That is the only change which is a minor one.

Q. Now, when your company started to ship cement, how did it determine the prices it would quote, and the methods it would use for distributing its cement?

A. We knew before the company even began to operate we knew what the delivered prices were that were being quoted in Pittsburgh, Butler, New Kensington, and nearby parts, and we could calculate that they were figured back to a certain price at Universal plus freight rate, and we began to make our quotations on that basis.

Q. Now, you mentioned having been in a similar line of business prior to your connection with the company. When you entered the cement business were you familiar with cement prices?

A. Yes, for a number of years, because I had been selling the same dealers and contractors, and, of course, had a pretty good general knowledge of what was being done

Q. And how do you determine the price at which you will sell cement at any particular destination?

A. We take the last known prices in an area and figure them back to a mill, giving us a so-called base price at the mill, and then add to it the freight rate at the particular point in question. There may be cases where our
27696 record indicates that there may be a number of so-called points—

27697 Trial Examiner Norwood: Finish your answer.

A. Points from which such a destination price might be computed, and, in this case, we take the lowest figure produced.

By Mr. Leisure:

Q. Do you give your salesmen any instructions with respect to reporting any changes in price?

A. The salesmen are all instructed to immediately telephone the main office on any reports of changes in price.

Q. Is that a matter of routine work?

A. Yes.

Q. There has been testimony here from other manufacturers to the effect that they also obtain this type of information not only from their salesmen but from their
27698 dealers. Has that been your experience?

A. Yes, the dealers generally call us if they hear of a new price, because they want to make sure that we are going to give them as low a price as is quoted.

Q. And do you, to shorten this, do you find out what the lowest price is as you describe,—is that the way you find out what the lowest price is?

A. Yes.

Q. Now, it also appears in the record here that not only dealers but contractors are very prompt in relaying that kind of information to the manufacturers. Does that meet with your experience also, Mr. McKee?

A. That is true. They are anxious to get the lowest possible price to bid on, and they also want to know if there is going to be a price advance.

Q. Without spending much time on it, if you get
27699 these reports, as you have indicated, how do you determine—I mean if a dealer notifies you, do you take his word for it, or—

A. No, we always have the salesman check or we check from our offices, try to find quotations, proper verification, that he is not just making reports in order to get a special reduction.

Q. And from your own office do you take any part in that investigation?

A. Yes, yes.

Q. Have your competitors ever provided you with copies of their quotations before or at the time of issuing them?

A. No.

Q. There has also been testimony here from other manufacturers to the effect that these changes are known very quickly and they very promptly learn of them.

Without going into it in detail, has that been your experience?

A. That is true.

Q. To finish that subject with one question, do you know of any single instance where the price change has not been reported to your headquarters very promptly?

A. No.

Q. Now, as to your own company, what has been its position? Has it led off on any price advance or decline, to your knowledge?

27700 A. No.

Q. I would like to call your attention to Commission's Exhibit 978-D, and I notice in the last paragraph—is that your letter, Mr. McKee?

A. Yes.

Q. I notice in the last paragraph there in quoting prices, you say in the case of freight rate changes you will change your price accordingly. What did you mean by that?

The Witness: We meant that the prices would be increased by the amount of any increase in freight rates or any additional Government tax on freight.

27701 Trial Examiner Norwood: You are referring to the delivered price there?

The Witness: Delivered price.

By Mr. Leisure:

Q. Well, what were your intentions? Were you trying to charge as much as you could for the cement and get the business, or what were you trying to do?

A. We did not want to have to absorb a freight increase when we were not making any money at the prices we were receiving.

27702 Washington, D. C.,
November 30, 1939.

27703 F. C. McKEE thereupon resumed the stand and testified further as follows:

Direct Examination by Mr. Leisure (Continued)

Q. Yesterday when we adjourned, Mr. McKee, we were discussing your practice with regard to the activity of your sales department in collecting information about price changes, and I was just about to ask you whether or not the sales department checked in any way this work as it came in.

A. Yes. We, of course, call other dealers in the same locality to see whether they have received new quotations, and get hold of various salesmen to have them interview dealers over the whole territory.

Q. Well, now, do you know, Mr. McKee, or, if so, how do you know, how your competitors arrive at the
27704 prices quoted by them?

A. Well, I presume they arrive in the same way, as their conditions are similar to ours. They probably have their salesmen check in the same way, and their dealers probably call them and advise them in the same fashion.

Q. Without going into the matter in detail, there has been considerable testimony here, both in the Commission's case and ours, as to how the lowest price is generally the sum of the freight and the constant figure at some mill. Without going into a lot of questions, is that or is that not your experience?

A. We have a record of what appear to be the last known so-called base prices, and we add to those the freight

rate to a given destination. It may involve calculating what might be the destination price figured from two or three different points. In a time of change we would calculate all of the different mills, possibly, but it would not matter whether we figured from all of them or only a few, the general method would be the same.

Q. Well, now, in checking back these prices, Mr. McKee, are you concerned only with the so-called base mills?

A. No.

Q. Or are you concerned with the known base mills, also?

A. Because every mill might decide, as they do from time to time, to start to use a figure at their own
27705 plant plus freight rates, and thereby be colloquially termed a base mill, and we don't know when that is going to happen.

Q. Well, how do you determine, then, whether the mill making this quotation is a so-called base or known base mill?

A. That, really, is a matter of no consequence, because the quotation, of course, may be made by any manufacturer, and any manufacturer who decided to use a price at his own plant plus his own freight rate to destination would thereby put himself into the classification of a base mill, but that it purely a colloquial designation of what he is,—it means nothing as between one mill or another.

Q. Well, then, do you keep any compilation of those figuring points, or so-called base points?

A. Yes, we naturally keep track of our last known so-called base mills as a matter of ready checking other than going through a lot of correspondence or asking salesmen from memory as to what they found.

Q. What, if any, instructions, Mr. McKee, does your company give to your salesmen regarding quotation prices at the present time?

A. We tell them to figure out a quotation at a destination on the basis of the last known so-called base price plus freight rate from those points to destination, and where they are in a locality which might be determined from several such points they have to calculate all of them.

27706 Q. Well, now, when you use these calculations can your salesmen determine what price you will quote? Do they have any assurance that they will be the lowest price quoted by a competitor?

A. There is no assurance whatever. Of course, if some change has not occurred the probabilities are that will be the lowest price, but we do not know beforehand, and they do not know beforehand.

Q. Well, is it necessary for you to make this calculation which you have described every time you quote?

A. Well, as a matter of convenience we have made up in our office some books for each State in which we list the last prices figured for destinations at which we have dealers; that is so if someone calls up over the phone and asks for a price we do not have to hold the phone four or five minutes to calculate it, and we, too, from time to time, send the salesmen out destination price lists of some of the principal points which saves their time.

Q. Well, now, as to those lists, do you give your salesmen lists of delivered prices?

A. They are not in any way complete, but suppose a price change has occurred, in order to save the men time we will sometimes send a list of a couple of basing principal points in their territory and that will save them embarrassment if a dealer asks what the price is, of sitting down and figuring around in his office, why, 2707 they can say yes, it is so and so.

Q. Do you use any price book with prices at various destinations in each sales territory?

A. We do not have any price book for the men. We just have in the office these price books for the points at which we have dealers who might call up on the phone and want a price quickly.

Q. Well, in the cases you have where you have not sold before, how do you arrive at the price you will quote at destination where no cement has been sold?

A. We take the last known so-called base price apparently nearest to the destination and calculate the price and presume that that price will be quoted again, but have no knowledge that it will.

Q. Does this situation arise very often where you will be called upon to quote where there has been no previous cement sold?

A. It only occurs where there is some highway construction at a siding or unimportant point that has not had any previous construction.

Q. Is your mill a base mill or not?

A. No, not a base mill.

Q. Has it ever been a base mill?

A. No.

Q. Have you considered that, Mr. McKee— Why
27708 couldn't you establish a base at your mill?

A. There would be no advantage to us in making it a base mill; it would merely reduce the net that we would receive by a few cents at a relatively small territory and such reduction would be met within 24 hours by our competitors.

Q. Well, as to that, have you given any consideration to it? How long would you have to go before you could keep out any substantial number of competitors?

A. We would probably have to go down to our out-of-pocket cost.

27709 Q. Now, do you sell any cement where the net return to you at the mill is less than the cost of
27710 production, Mr. McKee?

A. Yes, we do sell where the net to us is less than total cost of production, but not less than out-of-pocket cost of production.

Q. Well, do you recognize any mills of competitors as being basing points?

27711 A. We keep in our lists the names of certain mills who have last used prices at their mills plus freight rates which govern destination prices.

Q. Well, as to that, Mr. McKee, do you have any understanding or agreement with your competitors that you will or will not use certain basing points?

A. None whatever.

Q. Or to maintain any specific base price?

A. No.

Q. There have been charges here by the Commission that certain mills have established bases at other mills. Has your mill ever established a so-called base at any other mill?

A. No.

Q. And have any competitors of yours ever at any time put one in at your mill?

A. No.

Q. You said your location—you are near Pittsburgh—are there any towns between you and Pittsburgh?

A. A number of towns: Freeport, Tarentum, Springdale, New Kensington, Verona, Aspinwall.

Q. And what percentage of your output;—of your total annual shipments,—do you make to these towns, roughly?

A. About 7 percent.

Q. Now, what has been your observation,—has your method of marketing at any time since you have been with your company deprived you of your ability to
27712 sell to these locations,—I mean according to your geographical location?

A. No.

Q. Having in Mind His Honor's suggestion, Mr. McKee, are there any locations about your mill at the present time that you could take advantage of if you did establish a base,—and have you given consideration to that in your business?

A. If we would establish a base at our mill of the same price, at the same figure as the Universal, we would have a territory in which we would have a change momentarily of two to four cents per barrel, but that would only cover a territory to which we ship a relatively small percentage of our business, and since those prices would be
27713 immediately met we would gain nothing except a reduction in our return, which we cannot afford to do.

Q. You have given consideration to those problems in your daily management of the business?

A. Yes, sir.

Q. Now, should you so determine to do, is there anything that would prevent you from doing that? I mean, have you had any understanding or agreement—

27714 A. No.

Q. —with competitors that would prevent you doing it if you chose to do so?

A. No.

Q. Do you have any customers in West Winfield?

A. No.

Q. And, as a non-base mill, you have or have not attempted to establish new prices, or have followed the price that you found, which has been your practice?

A. We have followed the prices that we found.

Q. Now, your dealers also do business with other cement producers?

A. Yes, sir.

Q. And is any percentage of your business in the nature of repeat orders?

A. A large percentage.

Q. Now, on that, do you send quotations to your customers?

A. Yes.

Q. After you have done that, do you have any occasion,—your sales department, of course,—do you have any occasion to discuss the price with the cus-
27715 tomer?

A. Sometimes.

Q. There has been considerable testimony here with respect to other companies that in broadcasting these notices of price change that the information spreads throughout the territory immediately. Has that been your experience?

A. That is true. Friendly dealers will call us when they get somebody else's quotation, or tell the salesman as soon as they hear of it.

Q. And has it or has it not been your experience that any such change,—any effective price change,—becomes known immediately?

A. It has.

Q. Throughout the territory?

A. Yes.

Q. There has been also testimony to a considerable extent of secret or sub rosa prices. I do not want to go into that in any series of questions, but I would like to ask you just the one question as to what your experience has been. Is it possible to make a secret price?

A. It is possible to make it but it does not remain secret very long.

Q. Why not?

A. Because the man who gets the secret price will frequently talk about it in the hope of getting a lower price, and if it is to a dealer the dealer, by his re-sale
27716 quotation, will reveal the fact that he has a secret price.

Q. Well, now, when you quote a price, if you quote a price lower on one existing job, does that affect the rest of your customers?

A. It does, and would have the effect of losing more business than it would gain.

Q. Does your company allow any notice of price advances?

A. Yes.

Q. What, Mr. McKee?

A. When we find a notice of advance that, for instance, gives five-day notice, we tell our customers that we will give them the same notice; that is, a notice up to the same date, and, as we generally get that information the next day, it gives them sufficient time to re-quote contractors or revise bids, so that they are on a parity.

Q. Is that true when you lower a price to meet a price —I mean when you make your new price effective?

A. When we lower a price it becomes effective immediately, but we—

Trial Examiner Norwood: Well, you do not lower prices, do you?

The Witness: I should qualify that by saying when we lower our price to meet a lowered price, we make it effective immediately, and generally make an allowance on cars in transit in order not to penalize the consumer.

27717

By Mr. Leisure:

Q. Now, you have just explained that you merely are a price follower, as I understand it?

A. Price follower.

Q. Now, in the case of a price advance, if you follow the price up, do you give less than five days' notice to your trade?

A. We do, in that we give the trade the notice up to the date of the other quotations that we have found in the field, and as we are able generally to get that information the next day after it becomes effective, it still gives our dealer sufficient time to re-quote a contractor, or for a contractor to adjust his bid, or protect himself.

Q. You say to protect himself. You mean to protect your customers,—is that the reason you do it?

A. Yes.

Q. Well, that protects your customers, Mr. McKee; how about your own company?

A. Do you mean on the possible loss of the benefits of the advance between the two dates?

27718 Q. Does it protect your company, or doesn't it?

A. Well, it protects our company in preserving the good will of our customers.

Q. With respect to these changes in price which you follow, in cases where you follow a price rise, Mr. McKee, do you get the benefit of the price on all shipments made after the five-day period is over?

A. No, because we allow the dealers to place what we term 15-day orders up to the day that the price becomes effective; that is, they can ship those warehouse
27719 cars out within 15 days, and we generally allow contractors to contract on work that has been awarded to them during the succeeding 15 days, with the result that on large contracts we may not get the benefit of the new price for many months.

Q. Well, at the present time, do you have any provision in your contracts relating to your policy in the event of a price decline?

A. Yes, we allow the contractor the benefit of the current price during the period of decline. If the price should again advance he would then pay the original price; if the current price were the same, or above it.

Q. Who determines the price policies of the West Penn Company?

A. I determine it, in consultation with Mr. Binford.

Q. Do you also attend to the details of sales?

A. To a considerable extent.

Q. Is your company a small or large company?

A. Small.

Q. I mean by that, is it an important factor in the markets in which you do business?

A. No, it is not.

Q. Do you regard anyone—you have told us that you follow changes in prices—do you regard any one of your competitors as a leader in raising or lowering market prices?

27720 A. No, sometimes one will raise, sometimes another will raise, or lower.

Q. Has The Cement Institute ever attempted to influence you in your price policy, in any way?

A. No.

Q. Or has it ever had anything to do with price policies, as far as you know?

A. No.

Q. Now, in following the prices, as you have described them, Mr. McKee, have you ever consulted any other cement manufacturer regarding any intended change in your price?

A. No.

Q. As to any of your own policies, in carrying out your company's policies, have you ever been guided by the views of anybody outside your own management?

A. No.

Q. What is the policy of your company as to whether or not it is or is not a one-price-policy company?

A. We have always maintained a one-price policy.

Trial Examiner Norwood: Just what do you mean by that?

The Witness: To quote all of our prices openly, and to quote the same prices at any given destination to different consumers.

By Mr. Leisure:

27721 Q. There has been testimony heretofore by other Respondents to the effect that they considered price cutting a deviation, or, rather, a secret deviation from published prices. Do you consider any reduction in price as a price cut, or what is your view on that?

A. No, I do not consider an open reduction in price as a price cut, but I do consider a deviation from publicly known prices as a price cut.

Q. Well, have you ever been willing to sell your product at less than the prices which you find your competitors are getting?

A. Well, we have been willing to accept the business, but we have not quoted below because such quotations would be met and would be of no particular service to us in that respect.

27726 Q. Do you market all of your cement at delivered prices, Mr. McKee?

A. Yes.

Q. Why?

A. Because that's where a consumer wants a delivered price; that's how he figures his cost.

Q. And in adopting that policy do you consider at all the good will of your dealers?

A. Yes.

Q. Do you sell to any railroads, Mr. McKee?

A. Yes, the Pennsylvania Railroad.

Q. On what basis do you sell to the Pennsylvania Railroad?

A. We sell at a delivered price f.o.b. their tracks. The point in question is Winfield Junction.

Q. How do you arrive at that figure? How do you arrive at your method of quoting to the Pennsyl-

27727 vania Railroad?

A. The railroad, for quite a number of years,

took public bids, which were opened, and I, and others, have been present at the openings, and we found that the quotations were being made on a delivered price f.o.b. their line, due to the fact that the railroads have a practice of making no charge for moving company freight from one point on the line to another, and the price was figured by the lowest price being quoted by a mill on their line.

Now, in the case of our quotation, which is so much f.o.b. Winfield Junction, we quote that same lowest price that we have learned in the past was quoted to them on their line.

Q. Is that an exception to your policy which you have told us about?

A. No exception whatever. It is analogous to a situation where you have in a given city like Pittsburgh several different stations taking the same delivered price. In this case the whole of the railroad is a delivered price, although of the same figure.

Q. Do you sell the railroads direct, or through dealers, Mr. McKee?

A. We sell them direct, because—

Q. How long have you done that?

A. —with several hundred dealers on their line it would be impossible to determine what dealer we should sell

27728 through, and, also, after delivering the cement to them at their line, we don't know—

Trial Examiner Norwood: Now, he asked you how long you had done that. Now, if you will make an answer to that question—

The Witness: Pardon me.

How long?

By Mr. Leisure:

Q. Yes.

A. Since we began operations in 1927.

Q. The term "arbitrary," or "special prices" has been used here. Are you familiar with that term?

A. Yes.

Q. Do you meet any so-called arbitrary prices?

A. Yes.

Q. Where?

A. Allegheny County, Baltimore, and Washington.

Q. What kind of a price is there for Allegheny?

A. In Allegheny County there is a flat price of
27729 $2.04 in paper at any destination in Allegheny County.

Q. How do you learn of the arbitrary prices, Mr. McKee?

A. In the same way that we learn of any other prices, as soon as the dealers receive quotations those who are friendly to us call us up and tell us about it, or our salesmen, in calling on the trade, learn of it, and telephone us.

Q. Do you file any compilations of these prices?

A. Yes, we do, for ready reference.

The witness identified Resp. Ex. 1420-A to L as West Penn's Pennsylvania office price list containing the prices they were quoting at the time. It is not their current one. It is the one previously used at different important destinations where West Penn had dealers and is used for the purpose of answering inquiries quickly by 'phone or invoicing dealers regularly to save the calculation each time of what the price is from other data. It
27730 contains the flat price or so-called arbitrary price in Allegheny County that he describes.

27735 *Examination on Voir Dire by Mr. Paulson.*

Q. Can you tell me just what these figures mean,
27736 Mr. McKee? What, for instance,—the first line on 1420-A,—what is the "40" there?

A. The "40" represents the freight rate from West Winfield to Albion, Pa., expressed in cents per barrel.

Q. Where did you get that freight rate?

A. That we got out of the tariff, or—we could either get it out of the tariff—

Q. The tariff?

A. Or the Institute freight rate book.

Q. Well, where did you get it? The tariff don't contain rates in those figures.

A. No, we computed them on the basis of 380 pounds per barrel.

Q. Now, did you get it out of the tariffs, or out of the Institute books?

A. We could have gotten it from either source, and I don't make up these details myself, but it would be the same in either case.

Q. Yes.

What is this "2.16"?

A. 2.16 in paper. Well, now, that's the price that we were quoting at Albion, Pa.

Q. How do you jump from "40" over here to "2.16" here?

A. Well, that, I believe, was computed by taking the last known so-called base price at Cleveland of
27737 1.65, plus 15 cents for the paper package, plus 36 cents as the rate out of Cleveland, making 2.16. It was the competition we presumed we would have to meet at Albion.

Q. This doesn't show all that.

A. No, because that was done on scratch paper, but we put down all the different rates, including our own, and—

Q. Where on this line did you pick that up in the field, then?

A. Well, we had picked up—we have also in the office a list of the last known so-called base prices which will include the $1.65 Cleveland—

Q. Yes.

A. —and the $1.65 Universal.

Q. And you have in your office freight rate books?

A. We have in our office freight rate books.

Q. And you had the freight rate books to the destination prices, and you take the lowest combination that gives you the price, as a general rule; that is true?

A. That's right.

Trial Examiner Norwood:

Is that paper offered to establish the factual statements made therein with regard to specific prices at specific times?

27743 Mr. Leisure: Your Honor, it is offered to contradict any inference of collusion, and to show practice which we feel is contrary to the inference of collusion, and to show exactly what they did in these instances.

Trial Examiner Norwood: Well, I think it might as well be admitted as conditioned there. If there are any factual statements in that this witness may swear to them.

(RESP. EX. 1420-A to 1420-L, inclusive, was offered and received in evidence.)

By Mr. Leisure:

Q. Mr. McKee, does your company give quantity discounts?

27744 A. No.

Q. Why not?

A. Because we believe it would be unfair to our different customers.

For example, one customer might be bidding on a job and already have two or three other jobs. If he received a quantity discount he would have an unfair advantage over the man who had no other job at the time.

Q. Well, now, there has been some discussion here as to the advantage of selling in large amounts as opposed to selling to a number of customers the same amount. What is your attitude and experience toward that?

A. As a matter of fact, the sales expense is higher in selling large contracts, such as highway jobs, than it is to get an equal amount of business from dealer-customers who are buying regularly in smaller quantities.

Q. Do you give the Government any lower price than you do your dealers?

A. No.

Q. Why not?

A. Because if we gave the Government a lower price we would immediately have all of our customers dissatisfied and demanding a lower price on their purchases.

Q. In your experience, have any of your dealers requested the privilege of buying f.o.b. mill?

27745 A. Back in the late—back eight or nine years ago they did, but none have requested that in the last few years.

Q. Have you at times declined to quote the Federal Government on f.o.b. mill basis?

A. Yes.

Q. Do you have reference to Commission's Exhibits 1340 and 1339?

A. Yes.

Mr. MacIntyre: What is the number of the paper the witness is looking at?

The Witness: F.T.C. 1339.

By Mr. Leisure:

Q. Respondents' Exhibit No. 36 appears to be a letter from your company to the Procurement Division explaining why you did not bid.

I want to call your attention to the second paragraph in that exhibit, which reads as follows: "It does not seem to us as a fair method of taking bids. It does not appear practical for us to bid on this form."

Did you write that letter?

A. Yes.

Q. Dill you explain to us the circumstances under which you wrote the second paragraph?

A. We had a number of objections to this form of bidding which accounted for the fact that we did not bid.

27746 In the first place, it would have been bidding direct on certain types of cement consumption that we were quoting through dealers. In the second place, it would involve the necessity of our furnishing material f.o.b. mill with a possible extra cost involved in trucking. In the third place, the bid was very indefinite as to quantity, and we might have tied up a large amount of cement and not be called on to furnish.

The bid was also indefinite as to destination, but our most serious objection to the form of bid was in that it covered,—it, rather, produced an unfair disadvantage for the small one-mill company as against the chain companies.

For example, in the case of Southern Ohio, the Medusa Company had two mills in Ohio, one at Bay Ridge and one at Toledo, and one mill at Wantan in Pennsylvania near the Ohio border.

The practice of asking for a bid over a large area naturally favored the company who had more than one mill who could ship to the area and therefore place them in a better position to make a price and delivery. Furthermore, there would be in the State of Ohio probably fifteen to twenty different companies who would make a bid on this inquiry. Our chance would be only one out of fifteen or twenty. The amount of the proposal was so large that the loss of this quantity of business would make a very serious loss in our operations.

27747 Now, in the case of a chain company, they might bid on fifteen of these zones, and, therefore, have fifteen chances, and while they might lose out on fourteen they would get sufficient business on the fifteenth to compensate them, and average out, but it was placing every individual company in the position of putting a large part of its potential business on a gamble, and on a gamble that only one or two could secure the business, and we felt that if this were ultimately persisted in as a method of taking bids, it would mean the ruining of a large number of the small individual mills.

Q. Let me call your attention to Commission's Ex-

hibits 1391 and 1394, and ask you whether you received those invitations to bid also?

A. Yes, we received these invitations to bid, and while they were in two respects not as undesirable as the first one in that they stated a definite quantity and a definite rate of delivery, in all of the major objections that we had to the other bids which I have just explained, they were identical, and we therefore refused to bid on them as a matter of protest.

Q. When you do quote on sealed bids, Mr. McKee, how do you arrive at the figure you bid?

A. We take the most recent information we have had, quotations made at the destination—

Q. Perhaps we can save time: Is it the same or
27748 different as the commercial?

A. Same as the other; same as the other.

Q. Have you ever attended any Pennsylvania letting?

A. Yes.

Q. Do you recall Mr. Cosgrove's testimony in this record,—the State purchasing agent for Pennsylvania?

A. I do not want to—I would like to qualify my statement. When you said Pennsylvania lettings I was thinking of the highway lettings, in which highway jobs or bid by contractors where we attend for the purpose of soliciting the business of the successful bidder. I do not recall ever having attended that opening of cement bids at Harrisburg because that is a very perfunctory matter, and I do not think many producers ever attend such openings. Bids are mailed in, and they only cover usually a car or so for each inquiry.

Q. Now, Mr. Cosgrove testified here, without going into a lot of questions on it, that certain of the representatives of cement manufacturers told him that their company would be penalized if they cut prices.

Did any of your salesmen ever have any such instructions,—to make such statements?

A. None of our salesmen ever had such instructions or ever contacted Mr. Cosgrove, to the best of my knowledge.

27750 Q. Have you ever quoted the Federal Government on any requirements where land-grant rates were involved?

A. No.

Q. Or has your company ever solicited business in any territory where land-grant rates were involved?

A. No.

Q. I take it that covers all of the territory in which you sell, that you are not involved in land-grant rates in any way; is that true?

A. That is right.

Q. Now, as to terms of sale and discount, what are your terms of sale and cash discount?

A. Ten cents per barrel discount in 15 days, 30
27751 days net. In the case of customers who are regularly buying a number of cars per week, for the purposes of convenience, we permit them to discount twice a month, averaging the invoices to a 15-day average.

Q. And how long has that been the practice of your company?

A. That has been our practice ever since we began operations in the cement business, and a similar practice of 10 cents per ton, 15 days, was our practice in the stone and sand business at the time the cement company began to operate.

Q. Do your salesmen carry the freight rate books furnished by The Cement Institute?

A. Yes.

Q. And how do you use them in your company?

A. They use them to determine the freight rates various points to destination and add such freight rates to the last known so-called basing-point prices.

Q. Can you quote without The Cement Institute books? I mean, would you be able to quote the prices—

A. Oh, yes.

Q. —in the same manner as you do today?

A. Oh, yes, it is just a matter of convenience.

Q. Since you have been with your company, have you given any serious consideration to the matter of preparing your own freight books?

A. Yes; we did not give much serious considera-
27752 tion to it, because a very little study demonstrated that we would have to go to a considerable expense as an individual company to make up compilations out of the tariffs for ready reference, and to watch supplements as they came through, and the cost of securing the Institute freight rate books is only a fraction of what it would cost us to prepare those with an enlarged traffic department.

Q. In considering it, did you consider whether or not that would be as satisfactory as the books of the Institute, if you went to that expense?

A. Well, if we spent sufficient money we could make them as satisfactory.

Q. How many dealers does your company have, Mr. McKee?

A. About 400.

Q. What proportion, roughly, of your sales are through dealers?

A. About 60 percent.

Q. About what percentage of your sales, if you know, do you make to the Federal Government?

A. To the Federal Government direct, less than two or three percent, I believe.

Q. We have had considerable testimony here with other companies, in detail, about sales to dealers. I wonder if we can cover it in just one question:

Do you or do you not regard your dealer trade as
27753 your principal business?

A. I do.

Q. I wonder if we can save time on another point: There has been considerable testimony as to the services that the dealers render. Have you seen the record with respect to services rendered by dealers?

A. I have, and would agree with those statements, so far as I read them.

Q. Is the dealer of any value to you, Mr. McKee, other than as a sales outlet?

A. Well, I would say that he is. In the broad sense, all of his value to us is from a selling standpoint, but breaking that down he is of very great importance to us in the matter of credits. It would be very expensive, and practically impossible, for us to keep track of retail credits and collections.

Q. Now, as to your policies, do you have any concept of what constitutes a cement dealer?—

A. Yes.

Q. —in your policy?

A. Yes.

Q. What is it?

A. A man who has warehouse facilities, and delivery equipment, salesmen who solicit business or who solicits it

himself, one who has his principal interest in the
27754 sale and delivery of builders' supplies and carries a reasonable stock of such various supplies for the community in which he is situated.

Q. Do you make any difference, or consider that a dealer in a large town has to meet any different qualifications, as far as you are concerned, than the one in a small town?

A. He would have to have a larger line and more facilities. The demands on the dealer in the country would include more of other types of things than the mere builders' supplies in many cases.

Q. Mr. McKee, do your competitors sell cement to dealers who do not meet your concept of what constitutes a dealer?

A. Yes.

Q. And, vice versa, do you sell to any dealers who are not recognized as dealers by some of your competitors?

A. Possibly. Of course, I don't know what their opinions are in that respect.

Q. Well, is it necessary for a dealer to be a member of any dealer's association in order for you to consider him as a dealer?

A. No.

Q. (Indicating) I want to call your attention to Commission's Exhibit 549-3-C. Are you familiar with that?

A. Yes.

Q. I have some others here I would like to take
27755 up at the same time. Commission's Exhibits 549-3-A; 549-2-L, 549-5-C, 549-4-L, 549-4-M, 549-N, 549-O, 549-H (showing documents to witness),—all being Commission's exhibits. Are you familiar with those?

A. (Witness examines documents) These are all letters of inquiry to various people.

27756 Q. Let me call your attention to Commission's Exhibits 549-O, 549-Q, 549-T, 549-M, 549-P, 549-N, 549-G, 549-F, 549-2-M, 549-3-P, 549-4-P (showing documents to witness).

Did you get the last number?

A. Yes, I think I got that.

Q. Those are all exhibits that were offered by the Commission with respect to your company, Mr. McKee. Are you familiar with those, also?

A. Yes.

Q. Well, now, Commission's Exhibits 549-2-E, 549-2-F, 549-4-I, 549-4-K, 549-4-Y, 549-4-Z,—these letters are apparently written on behalf of the Penn Company to associations of building supply dealers during 1933 and 1934, and also 1935, requesting information as to some recognized building supply dealer in certain parts of your territory, Mr. McKee.

Will you tell us now what your purpose was in obtaining the opinions of these dealer associations as to who were so-called recognized dealers in certain territories?

27757 A: We tried to select our dealers as carefully as we do our salesmen, because they represent us. The transaction is not a matter of a single sale, but we hope will be a continuing relation over many years in which they will promote our product. We naturally, as we would in employing a man, or beginning a relationship with him, try to get all possible information about him.

Dun and Bradstreet will tell us about his credit standing, but, of equal importance to us, is whether the man has the warehouse facilities, the delivery equipment to be a satisfactory outlet for us, whether his building supply business is his principal business, or whether he has just hung up his shingle and is only temporarily desiring to purchase cement, and is not in it to promote the continued sale of our product in that territory.

There is considerable difficulty about getting this information. If we inquire of another dealer in the town involved he may be biased. By writing an association, or, if it is an official, we may be able to get a more unbiased opinion. We cannot depend altogether on the salesman's reports because salesmen in their anxiety to get an order may be overoptimistic as to the possibilities, or the abilities—

Trial Examiner Norwood: You need not explain that.

A. (Continuing.) —of the dealer in question.

Trial Examiner Norwood: He asked you about
27758 the dealers.

The Witness: Yes, I would like to make one statement as to the reason we use—

By Mr. Leisure:

Q. Are you explaining the exhibit that I just asked you about?

A. The exhibit.

Q. Please make it complete.

A. The reason we use the term "recognized" or "legitimate," is that the man is recognized by the general public, or other dealers, as being in that business, and that he is legitimately in the business, and not somebody who hangs up a sign and says, "I am a dealer." If we were asking about a lawyer, we would write to a bar association or guild—

Trial Examiner Norwood: Let me see that (referring to exhibit witness holds in his hand).

By Mr. Leisure:

Q. Then you are referring to the use of the word "recognized" as used in these exhibits, Commission's 549, and so forth?

A. Yes.

Q. Did you make any greater effort to obtain these lists during 1934 than you did any other time?

A. Yes, due to the fact that we had had to reduce temporarily the areas that we were soliciting during the depression, and in explaining those areas there were
27759 many more people that we did not know about than there have been recently.

Q. Do you still try to obtain this kind of information, Mr. McKee?

A. Yes.

Q. What is your practice? Do you sell to any dealer that is in a community?

A. Usually we only sell to one dealer, except in larger communities. The reason for that is if we sell to every one, none of them would feel it would be worth their while to push the promotion of our product.

Q. And do you sell to any dealers who are not members of a dealer association?

A. Yes.

Q. I wish to call your attention to another Commission's exhibit, Mr. McKee—in fact, two other exhibits—549-2-F, 549-3-E (indicating).

I notice in the lefthand corner of Commission's Exhibit 549-2-F there are the typewritten initials "TCF:E"; do you know what those are?

A. That is T. C. Fleming, of our Butler office.

Q. And Commission's Exhibit 549-3-E, which is the

letter of your company to a Mr. Richter, of the Building Supply Dealers' Association, has also the initials in the lefthand corner "TCF:CB."

A. That was also written by Mr. Fleming.

27760 Q. Now, neither of these Commission's exhibits bear any signature. Can you tell from those initials who in your company wrote those letters?

A. I am quite sure they were written by Mr. Fleming, and signed by him in my absence. If it was intended they were to be signed by me they would have had the word "vice-president" and the company name.

Q. Now, I observe in this 549-2-F Mr. Fleming asked whether a Mr. Lindenmuth is recognized as a building material dealer, and it is quoted as follows: "And if he may be quoted on cement on a dealer basis," and then on 549-3-E, also concerns a Mr. Lindenmuth, and states: "We assume, therefore, that he may be quoted on cement as a building supply dealer."

With respect to those two statements, let me ask you: Has it ever been a policy of your company to obtain the permission of any building material dealers' association before quoting a person as a cement dealer?

27763 By Mr. Leisure:

Q. I notice that this Exhibit 549-4-I is a letter to Mr. Rush, of the Eastern Pennsylvania Builders' Supply asking if he sees any objection to the sale of carload cement through Harrisburg dealers on shipments to Bethlehem, Steelton, Pa.

27764 Did you write that letter, Mr. McKee?

A. Yes, I believe so.

Q. What was the purpose of that letter?

A. We had received an inquiry from Bethlehem Steel Company, or an indication that they would place an order with us for shipment to Steelton, and desired it to be shipped to or through the account of a Harrisburg dealer. We already had a dealer at Steelton.

It is the practice in many metropolitan areas to consider certain suburbs as a portion of the general marketing area, and dealers in one section ship to another, and vice versa.

We did not want to ship for the Harrisburg dealer's account into Steelton if there was no precedent for so doing. We did not want to inquire of the Steelton dealer

because his reply might be biased, or we might unnecessarily stir him up. We did not want to inquire of the Harrisburg dealer because he would also be biased, and the only source that seemed to be fair minded was to inquire of Mr. Rush, whom we presumed was familiar with the conditions.

Trial Examiner Norwood: What is that letter? Let me see it?

The Witness: Yes, sir (handing document to the Trial Examiner).

Trial Examiner Norwood: Did you get a reply 27765 to this letter, this February 9th letter?

The Witness: I think we did.

By Mr. Leisure:

Q. Mr. McKee, if you feel it is advantageous to ship to a Harrisburg dealer for delivery to Steelton, why don't you go ahead and do it?

A. Because we would lose the regular business of the Steelton dealer if it had not been a previous practice.

Q. Well, what was your— When you wrote this, what was your attitude,—did you or did you not feel that the precedent would be sufficient answer to your Steelton dealer if he complained to you?

A. We feel that the precedent would be sufficient answer.

Q. There is another exhibit here, Commission's Exhibit 549-4-K from the West Penn Company. I want to call your attention to the initials in the corner again.

Can you tell from looking at those who wrote the letter?

A. The initials are "F. C. M.-E.," "E" being a Miss Ellenberger, who was in our order department for a time.

I do not believe that I either dictated this letter 27766 or signed it because the language is not the language that I used as indicated by the other exhibits.

I, as mentioned previously, was in the habit, when in a hurry, of picking out letters of inquiry from dealers and giving them to either Fleming or Miss Ellenberger to write for inquiries.

When Fleming dictated the letters to the stenographer his initials were put on and he would sign them.

The stenographer in this case evidently used my initials, and sent it out, because it is entirely different from my own manner of expression as shown in the other exhibits.

Q. Well, did you feel there was an restriction upon you as to whom you could quote, or whom you could not quote?

A. No.

27767 Q. Mr. McKee, I want to call your attention to two more Commission's exhibits, one 549-4-Y, addressed to the West Penn Company by Mr. Updike, and 549-4-Z, a letter dated October 23, 1935, by your company to Mr. Murray, of the Ohio Builders' Supply Association (handing documents to witness).

A. (Witness examines documents.)

Q. Now, I observe that the first one, Commission's Exhibit 549-4-Y, in that letter Mr. Updike asks for a price on five cars of cement in certain towns in Ohio for W.P.A. work. Then, as to the second, you apparently on October 23, Commission's Exhibit 549-4-Z, wrote to Mr. Murray of the Ohio Builders' Supply Association advising him that you have not quoted the Updike Company at any of the points involved in his inquiry, and then you acknowledge his report.

What was that done for, Mr. McKee?

27768 A. We received this inquiry from Updike and questioned whether his main interest was builders' supplies, because his letterhead states "All kinds of field seeds, grain, flour, feeds, fertilizers, fencing, coal, tile, cement, wool, hay, custom grinding.".

We, therefore, asked Mr. Murray, as was our usual practice, what he knew about him, and learned that he was not principally interested in builders' supplies, and then did not quote Mr. Updike. Our reason for advising Mr. Murray that we had not quoted him was similar to our procedure when we ask Dun and Bradstreet or a credit interchange for a financial report—I should eliminate Dun and Bradstreet—when we ask the credit interchange for a financial report on a man, we are under more or less of a gentleman's obligation to explain to him, when we don't refuse credit and don't quote—and the same way if I ask a friend about a salesman I would feel a certain obligation to advise him that we had not hired him, to let him know the final outcome, and we so advised Mr. Murray.

We also just added at any of the points involved, including Fredericktown, because Fredericktown happened to be Updike's home town, and there might have been some possible misunderstanding that we had quoted him there and not at the other points.

Q. Well, does it make any difference whether you had a dealer in Fredericktown or not?

A. That wouldn't make any difference because if
27769 we would have made an arrangement for him to be our dealer there, it would have prevented us getting a more desirable dealer who was really making builders' supplies his principal business.

Q. Now, prior to your going with the West Penn
27770 Company, Mr. McKee, you said you were in the sand and crushed limestone business; is that correct?

A. Yes.

Q. In the course of that business did you have any acquaintance with the methods of marketing and pricing of cement?

A. Yes, I was familiar, because a great many of our customers then are now customers for cement.

By Mr. Leisure:

27771 Q. Let me ask you, did you conduct your business through dealers?

A. In part.

Q. Did your dealers at that time also handle cement?

A. Yes.

Q. Now, when you started with your company in 1927, I think you said, did you sell at that time through dealers?

A. Yes.

27773 Q. Have you made any change in your policy and, if so, when?

A. About 1931 we began to sell certain types of highway and other construction outside of cities, towns, and villages, direct; certain other modifications about that period.

Q. Then, did you sell more business direct after that time?

A. Yes.

Q. I would like to call your attention to another Commission exhibit, Commission's Exhibits 549-U and R, Mr. McKee. This 549-U I notice is a letter from Mr. E.
27774 C. Kinney of the Ohio Builders' Supply Association, dated January 24, 1933, advising him that you would be glad to quote only through dealers in the Greater Columbus Market for work covering buildings and municipal construction, but in the case of State highways there

were so many complications that you wanted to withhold judgment.

At the time you wrote that letter what was your company's policy with respect to building and municipal construction in the markets such as Columbus?

A. Our policy was to quote building and municipal construction through dealers, and to quote highway construction outside of cities and towns—exclusively outside of villages, towns, or cities direct.

The letter from Mr. Kinney was somewhat ambiguous in its statement of Greater Columbus Market, and in my answer I wanted to reserve judgment as to what was involved, and also what conditions we might have to meet that might develop from quotations of other companies.

Q. Well, in that respect, were you changing your policy or was it the same?

A. Well, we were not changing a policy because he was not definite as to just what he meant by Greater Columbus Market, whether it meant within the city limits, or partly within and partly without, or whether he meant the suburbs around Columbus.

Q. Then, in answering Mr. Kinney's letter, I
27775 merely want to find out whether you were stating the same policy, or did you change?

A. We were not changing the policy.

Q. You say you reserved judgment in that letter. What do you mean by that?

A. Well, I reserved—I possibly better express reserving an answer,—until I found out definitely what he referred to in the word "market," as to whether it covered highways located exclusively within or partly within and partly without, or exclusively without.

Q. Now, what effect, if any, would this have on your dealer trade or your dealer policy, Mr. McKee?

A. Well, we, naturally, having stated a policy, we did not want to act contrary to it lest our dealers would feel that we were not dependable, and would not regard their interests in business they might have developed.

Q. And your policy, during the time that these letters were written, was that—so that we may sum it up, was what, please?

A. To sell buildings and other constructions through dealers, and to sell highway and dam construction, any portion of which was outside of cities, towns, or villages, direct.

Q. There is another Commission's exhibit, 549-2-H, being a letter of the Virginia Lumber Building Supply Company to you, dated July 3, 1933.

Mr. MacIntyre: What is the number of that, please?

27776 The Witness: 549-2-H.

By Mr. Leisure:

Q. Are you familiar with that letter?

A. Yes.

Q. Did you make any change in your policy as a result of that letter, or does it represent what your policy was already?

A. It represents our standard policy, and we probably used this dealer margin as a basis of informative informal quotations to bidders on this project.

Q. Commission's Exhibit 549-4-V appears to be a letter on the letterhead of the West Virginia Builders' Supply Dealers' Association, addressed to your company, dated September 11, 1935, and Commission's Exhibit 549-4-W is a statement of policy by the West Virginia Lumber Builders' Association.

Are you familiar with those (handing documents to witness)?

A. Yes, this is a request for a careful consideration of the attached distribution statement, which, incidentally, is the same as we had been following prior to the receipt of this statement.

27778 Q. I have in my hand a Commission's exhibit, Mr. McKee, which is No. 571,—I think it is 5-E and 5-F,—which is a letter dated April 7, 1934, from you to Mr. Affleck (indicating).

Will you explain to us what you meant by the reference to the controversy with the building supply dealers in that letter, please?

27780 A. I referred to the fact that at the time the Codes were adopted there seemed to be a great deal of friction between the Code administrators for the dealers and for the cement companies, and that that controversy over methods of sale had continued, and was a matter of regret—continued, I believe, during the Code period.

27784 Q. Mr. McKee, I would like to direct your attention to Commission's Exhibit 549-V and S,—it is a letter to a Mr. Kinney of the Ohio Builders' Supply Deal-

ers Association, asking him what dealer differential the Columbus dealers were asking in connection with the Columbus Post Office, and there is the answer—Mr. Kinney answered that you should quote a 10-cent differential f.o.b. cars.

Are you familiar with that—with the correspondence represented by these two exhibits (handing documents to witness)?

(Witness examines documents.)

A. Yes, sir.

Q. What was the occasion for this correspondence?

A. We had received inquiries from contractors not located in Columbus, on Portland cement, and for purposes of information we wanted to know what the quotation would be to them on cement for the account of Columbus
27785 dealers so that they could prepare a bid without having to go to Columbus or call up some dealer in Columbus and get that information.

27787 Q. There is another Commission exhibit in evidence, No. 549-2-E, having to do with your company. It is a letter written by—well, I will let you tell us who it is from. It is addressed to M. H. Mitchell, Virginia Lumber and Builders' Supply Dealers' Association, dated January 6, 1933, and states in effect that in accordance with his request you would be glad to quote three bridges at Richmond through a dealer.

Are you familiar with that— First, whose letter is it?

A. That is a letter from me to Mr. Mitchell.

Q. You wrote that?

A. Yes.

Q. Well, then, how did that compare with your policy on such business at that time?

A. That was in line with our general policy.

27788 Q. Was it customary for building supply associations, Mr. McKee, to ask you to quote certain kinds of work one way or another?

A. Quite frequently that was done because—shall I state why it was done? I am not in position to do that, but it was done.

Q. State your experience.

A. Quite frequently it was done.

27789 Q. You have told us that your company started to ship cement in 1927; is that right?

A. Yes.

Q. At that time did you make any deliveries to trucks?
A. No.
Q. During the early period that you have told us about when you—that you did not make deliveries to trucks at the mill, did you have any demand for such deliveries?
27790 A. I do not believe we had.
Trucking began to develop as a serious factor in 1928, and then we began to have some requests for trucking, but it was always a relatively small percentage of the total business.
Q. Then, several years after you commenced operations was when your company first began to load trucks at the mills?
A. Yes.
Q. Where did your customers for truck delivery come from, Mr. McKee?
A. They came from Butler, Freeport, Trenton, Tanning, and a few from Pittsburgh.
Q. Did you attempt to meet the truck competition which you found in Pittsburgh?
A. Yes, we were forced to hire truckers at certain times and deliver cement into Pittsburgh by truck at what we could ascertain was the cost of cement trucked from local warehouses in Pittsburgh, of Green Bag and Universal; that would be taken the last known price at those warehouses plus the cost of trucking to a given ward or location in Greater Pittsburgh.
Q. You mentioned Butler,—coming from Butler. How far is that from your plant?
A. That is 17 miles.
Q. Well, with respect to this Pittsburgh competition you mention, what was your experience—first, tell
27791 us whether you had any difficulty in determining what that competition was?
A. Yes, it was somewhat difficult because truckers would have different ideas of their cost of trucking, but we were able to determine it pretty closely and delivered a considerable amount by truck.
Q. Well, did you—as I understand you, you met this truck competition.
A. Yes.
Q. And why was that necessary?
A. In order to get that much business from customers that we had formerly shipped by rail.

Q. Well, do you mean by that,—were you losing any business?

A. We were losing business and had to cure it.

Q. Now, how long, Mr. McKee, did you continue to make deliveries in that way, in that fashion?

A. In May of 1931 we stopped taking new orders for delivery by truck, but we had at that time contracted for a number of jobs for the life of the job, and continued to do some trucking up until December 31, 1931.

Q. Well, during that period did you find any change in the demand for that kind of delivery?

A. Yes, we found that there was less demand.

Q. As time increased, you mean?

A. Yes.

27792 Q. And did you have any conversations with your customers during this period of time regarding truck delivery?

A. We had them.

27794 Q. Mr. McKee, you subsequently took certain action with regard to trucking. Would you have taken that action regardless of any information you had at that time with respect to your customers' feeling about it?

A. We discontinued trucking for a number of years. Is that the—

Trial Examiner Norwood: Yes, give us those reasons.

The Witness: In loading cement by truck, we first permitted the trucks to back up to the loading platforms which greatly interfered with the loading of cars. We then bought box cars—

Trial Examiner Norwood: Now, I think that we are familiar with a great many of these details, and you need not go into detail. You just name the principal

27795 reasons you have.

The Witness: The principal reasons were the extra cost of handling and loading cement on trucks; the risk of loss in accounting for the total amount loaded into a truck; the trouble that it made when one dealer who was exclusive with us in one town would truck cement over into the town of another dealer, therefore, after he had developed a demand for our product in that town, which caused us to be in a controversy with him; and the fact, in general, that it was putting a manufacturing plant into the retail business.

By Mr. Leisure:

Q. And what, if anything, did you find from your customers as to whether or not they were favorable to trucking?

A. An increasingly large number expressed themselves as dissatisfied with trucking.

Q. Were you coerced in any way by any of these,—any of your dealers, Mr. McKee?

A. No.

Q. Was your plant equipped for truck loading, Mr. McKee?

27796 A. Yes, we were able to load by trucks, although we did not have a special loading platform for that purpose.

Q. When you began to produce cement at your West Winfield plant, were any of your competitors trucking at that time?

A. A small amount of trucking from the Universal plant at Universal, Pa.

Q. And you began how much later?

A. As nearly as I can recall, about a year later.

Q. I have here a Commission's exhibit, Mr. McKee,—the number is 970-3-Y, 4-I. It purports to be West Penn's answer to the Clark-Burns' questionnaire. I notice that it refers to 20-cents-per-barrel charge, loading trucks.

I would like to ask you with regard to that. During the period when you loaded trucks, did you charge any loading charge of 20 cents a barrel (handing document to witness)?

A. For a time twenty, and then fifteen, and then for a period no charge.

Q. Did you or did you not find that you could discontinue trucking without hurting your position with your dealer customers?

A. We found that we could.

Q. What was your attitude toward trucking, yourself, from your company's standpoint,—were you favorable toward it, or—

A. Unfavorable.

27797 Q. —did you find it unsatisfactory?

A. We found it unsatisfactory.

Q. Now, you told us that you discontinued in April, 1931—discontinued trucking.

A. May of 1931.

Q. May, 1931?

A. On taking new business.

Q. Did any of your competitors doing business in your general area discontinue trucking around that time?

A. None around that time, but others did later at different times. I can't remember distinctly just when.

Q. Did you give your trade any notification of this? Did you notify your trade before you discontinued trucking?

A. Yes, we notified all of those who had been regularly coming to the mill, and I am quite certain that we did it by word of mouth, either by the salesmen or myself calling on them, or by phone, because we felt that it was better to do that and be able to explain the condition than to attempt to handle it in a mere letter as a peremptory proposition.

Q. Did you notify any of your competitors?

A. No.

Q. I have another Commission's exhibit, 1363, and it states that a number of companies announced the discontinuance of trucking (handing document to witness).

Do you know anything about that exhibit, and was
27798 there any agreement between your company and any others as to discontinuance of trucking?

A. No, no agreement.

Now, I see the letter is dated August 27th, and it states there is a movement now on foot to have various companies in West Penn announce the discontinuance of trucking. As a matter of fact, we had done it back in May.

Q. August, what year?

A. August, 1931.

Q. Well, do you know of any movement to discontinue trucking by the companies—do you know of any such movement?

A. We discontinued in May, and, as I recall, some others discontinued at various times during the year.

Trial Examiner Norwood: Did you see announcements from other companies about discontinuance of trucking?

The Witness: How is that, Your Honor?

Trial Examiner Norwood: Did you see any announcement of policies from other companies about discontinuance of trucking?

The Witness: No, I don't think so. I am not sure. I wouldn't have paid much attention to that, because we had already discontinued in May.

Trial Examiner Norwood: I see.

27799 Trial Examiner Norwood: Can you explain that answer?

The Witness: Yes, I can explain. I think the question was whether we had seen notices from the other companies.

We would know within a couple of days, at the most, after a particular company discontinued trucking, because our salesmen would learn that from the dealers involved, and the information would spread very quickly.

Trial Examiner Norwood: Well, did you learn through dealers that other companies had discontinued trucking?

The Witness: We did.

Trial Examiner Norwood: I see.

By Mr. Leisure:

Q. I have here Commission's Exhibits 1043-B, H, and 5-H (indicating). Do you know of any agreement referred to in this A. B. Meyers' letter to Eugene Morris to discontinue trucking?

A. No.

Trial Examiner Norwood: Let me see it.

(The witness hands document to the Trial Examiner.)

27800 By Mr. Leisure:

Q. And you have already told us that you were not a party to any such agreement or understanding?

A. We had discontinued before the date referred to.

Q. Were any short haul rates obtained at that time, or since?

A. No.

Q. There is another Commission's exhibit on this subject, dated June 12, 1931. It is a letter from Mr. R. H. Hoy, sales manager of Universal at Pittsburgh, to Mr. Stone:

"You can see the fine handwriting of Bob Long, of the Lehigh, McKee of West Penn, and Dankel of Bessemer. All of these companies are continually urging the dealers to use their influence to have trucking discontinued in Pittsburgh, giving them the impression that if this were done it would clean up the situation in the entire country."

This is dated June 12, 1931.

Did you take any part in urging dealers to use their influence to have trucking discontinued in Pittsburgh, Mr. McKee (handing document to witness)?

Mr. MacIntyre: What is the number of that exhibit?

Mr. Leisure: Commission's Exhibit 2654.

A. Well, all we did was after having discontinued trucking ourselves, when we would be conversing with dealers, we would tell them that we had found it satis-
27801 factory, and we naturally had many dealers who said that they had found it satisfactory that we had discontinued, and we would discuss it as we would discuss any other development in the construction field.

By Mr. Leisure:

Q. Well, but that letter, Mr. McKee, indicates that you and Mr. Long, of Lehigh, and Mr. Dankel, of Bessemer, took some sort of concerted action with respect to it.

A. No.

Q. I am asking you whether you took any?

A. No, we took no concerted action.

Trial Examiner Norwood: Did you discuss it with them?

The Witness: You mean with the other—

Trial Examiner Norwood: With the ones named there?

The Witness: With the ones named there?

Trial Examiner Norwood: Yes.

The Witness: Well, I have no doubt that when we met together at lettings, or other places, somebody would say, "Well, what do you think of trucking? How is your experience?" And we would express our experience on it. That was after the event.

Trial Examiner Norwood: Did that amount to a discussion?

The Witness: I wouldn't say it was a discussion.

By Mr. Leisure:

27802 Q. Well, did you—following that up—did you ever get together for the purpose of discussing it?

A. No, no, it was in an informal—

Q. Well, did you ever sit down with dealers for the same purpose, to discuss that?

A. No. Of course, in calling on dealers the subject might come up, just like the many things come up at our—

Q. I mean at a meeting of dealers.

A. Not a meeting of dealers.

Q. I have here three other Commission's exhibits, 1043-G, 1043-H, 1043-L; 1043-G is on the letterhead of Youngstown Ice Company; 1043-L is on the letterhead of Ohio Builders' Supply Association. Both of those are ad-

dressed to a Mr. Kinney. The Exhibit 1043-G, in the second paragraph, refers to your mill. It says:

"This is real news as the West Penn mill is right at the back door of Butler."

And then on Exhibit 1043-L: "You understand
27803 West Penn is outside the trucking radius into Youngstown."

Did you truck into Youngstown, Mr. McKee (handing documents to witness)?

A. No.

Q. Are there any cement plants between your mill and Youngstown?

A. Lehigh and Bessemer and Medusa.

Q. Well, now, as to that, during this period 1931 and 1932, did you have any contacts with a Mr. W. W. Campbell?

A. Yes, he was and is one of our dealers.

Q. Did he discuss trucking with you?

A. Yes, along with a good many other things.

Q. Well, did he make any threats to you?

A. No threats.

Q. Did you ever have any conference or meeting with railroad officials with reference to trucking?

A. I recall none.

Q. Did you ever have any conference on trucking with any officer or representative of the Youngstown Ice Company?

A. The Youngstown Ice Company were customers, and, of course, I called on Holway from time to time, as well as our salesmen in that territory, and the question of trucking was one of a good many subjects that we talked about.

Q. I notice that Commission's Exhibit 1043-G, Holway appears to have written you what the West Penn
27804 Cement Company was doing. Is that information which he could have obtained at any place at any time?

A. Oh, yes, he could have obtained that from any of the local dealers near our mill, or from competitors, or various other sources besides what he got from me.

Q. Did you have any correspondence with Mr. Cole, of Medusa, around 1931 with reference to railroad rates, Mr McKee?

A. I am quite sure that I did not. I think we still had our traffic man at that time, and he would have been the

only one who would probably have correspondence with Cole, but I don't think we had any correspondence with him.

Q. Now, I have a Commission's exhibit here, 1043-M, which is a letter of Mr. Cole of Medusa to the Wabash Railroad Company (indicating). It is dated May 28, 1931, on the letterhead of the Medusa Company, and Mr. Cole states that he would write to cement companies, including the West Penn Cement Company, with reference to the subject of trucking.

Do you recall having received any such letter from Mr. Cole?

A. I don't recall that. Furthermore, I notice the date of his letter is May 28th. His letter indicates he had not yet written us, and, therefore, had it been received it would have been after the time at which we discontinued trucking.

Q. I see.

I have here another Commission's exhibit, 1363, 27805 dated August 27, 1931, which mentions the Universal's attitude.

Do you recall any conversation with Mr. Oliver about Universal's attitude toward trucking cement in August, 1931?

A. Well, this would seem to indicate that I had, but, in the first place, I was in no position to state what their attitude was. I think that I might have said to Mr. Oliver—

Mr. Paulson: Now, he is going beyond the question and I object.

Trial Examiner Norwood: You have made that statement there, and if he wants to bring out another statement from you at another time, he may do so.

By Mr. Leisure:

Q. Your name is used there, Mr. McKee?

A. Yes.

Q. Can you tell us—have you any knowledge in what connection it was used?

A. Well, I think—

Trial Examiner Norwood: Well, did he write that?

Mr. Leisure: Well, it makes a statement that he did something.

Trial Examiner Norwood: Now, he can state whether he did or he did not.

The Witness: Well, evidently from the letter I had a conversation with Mr. Oliver, but from the statement he makes I am quite sure—

27806 Trial Examiner Norwood: Well, now, wait a minute. Don't make any deductions from the statement he makes. You tell us what you know about it and we can study the letter.

By Mr. Leisure:

Q. Mr. McKee, when we adjourned we were discussing Exhibit 1363, and in that exhibit there is a statement as follows: "The Universal's attitude now is, according to Mr. McKee of the West Penn, that they do not want to start anything, but if the situation can be cleared up in Ohio they will correct their situation here further providing the Green Bag go along." That is August 27, 1931.

Now, what, if anything, do you know about a situation as explained in that statement?

A. As near as I can recall, I think I said to Mr.

27807 Oliver that judging from previous observation that I thought certain developments might take place if certain other things happened, but I was in no position to make any definite statement on such.

Q. The point is, did you have any such conversation with any official of Universal?

A. No.

Q. There are four other exhibits, Commission exhibits, having to do with the same subject matter here, 1043-J, 1043-I, 1043-K, and 1043-F.

27808 Will you just look at them and tell us whether or not your company had anything to do with the subject matter of those documents?

27809 A. The answer is "No."

27810 Q. Finishing up the subject with one more question, do your customers request delivery through trucks today, Mr. McKee?

A. No.

Q. Now, going to a new subject matter, do you have occasion to make any shipments by water?

A. Yes.

Q. Is that a customary method of shipment,—is it frequent or infrequent?

A. It is a very infrequent method of shipment, and only where the cement is going to be used on dams or river piers.

Q. Where do the shipments go by water?

A. The shipments go by water, or have gone by water to points on the Allegheny and Ohio Rivers for the construction of dams or river piers.

Q. And do they or do they not go partially by rail?

A. Partly by rail.

Q. Do you prepay the freight or does the customer pay the freight?

A. Do your mean on shipments by water?

Q. Generally, I mean.

A. We do not prepay the freight except to a prepaid point, but we invoice the customer at the destina-
27811 tion price, and if he has paid the freight make an allowance to him for the amount involved.

Q. Taking another subject matter: Does the West Penn Company, Mr. McKee, come into any competition with imported cement?

A. Only at Baltimore, Md., to a limited extent.

Q. There is a charge in the complaint, and there has been considerable testimony here with respect to an alleged attempt to boycott certain dealers. I wonder if we can save some time and just let me ask you in one question whether you ever have been a party to any such transaction?

A. We have never been a party to such transaction.

Q. I have a Commission exhibit here, 210-C-1—I think it is C to I, it looks like C to I, Mr. McKee, and your name appears on it—I mean the name of your company—and 955, 985-A and B.

Without spending time on those exhibits, will you just tell us whether or not you established any cement stocks in Brooklyn?

A. No.

Q. You did not?

A. No, we did not.

Q. Did you continue to file prices after the N.R.A. Code was discontinued?

A. Yes, for a time.

Q. Now, the subject of diversions has been dis-
27812 cussed on the record.

Does the West Penn Company have any policy regarding diversions of cement in transit?

A. Yes, we don't permit them.

Q. Do you meet that situation very much? I mean, do you have any trouble with diversions?

A. I can only recall one case since we have been operating.

Q. Do you stamp your bills of lading to prevent diversions?

A. No.

Q. What is your attitude about diversions? Are you favorable toward them or unfavorable to them, and, if so, why?

A. We are unfavorable because it would permit a dealer in one town to go in and interfere with another dealer in another town who has been developing an acceptance for our product.

Q. Do you manufacture any other brand of cement than the standard Portland cement?

27815 A. Yes.

By Mr. Leisure:

Q. Do you make high early strength cement?

A. Yes.

Q. When did you commence manufacturing that, please?

A. About 1930.

27816 Q. Is the standard cement which you sell today above the minimum specifications?

A. Yes.

Q. In manufacturing this standard cement of yours which is above the standard qualifications, have you been able to sell it at any higher price than your competitors sell their standard cement?

A. No.

Q. In addition to manufacturing standard and high early strength cements, do you make any other special cements?

A. Waterproof cements and masonry cements.

Q. Do you manufacture, in addition to that, any cement under special specifications?

27817 A. Yes, we make what the Government terms modified Portland cement, sulphate-resisting cement, and various other special specifications of State highway and other engineering departments from time to time.

Q. Now, I have in my hand a Commission's Exhibit

178-D to Q, which appears to be the specifications for the Tygart River Reservoir Dam (handing document to witness).

(Witness examines document.)

Q. And apparently Commission's Exhibit 178-C, which is the abstract which goes with the same exhibit
27818 (handing document to witness).

Are you familiar with that, Mr. McKee?

A. Yes.

Q. Now, on this Tygart River Reservoir job, did you bid?

A. Yes.

Q. There seems to have been three invitations there. How did you make up your price on those bids?

A. We received notice of file prices in all cases from the Code Authority, and bid on the basis of that information.

Q. Did you have any contact with your competitors by which it was determined what price you would file for the Tygart River Reservoir Dam?

A. No. We filed no price; as I recall, we received a notice from the Code Authority of the three prices filed at the different periods before the bids were taken.

27821 Q. What is the present annual capacity of your plant?

A. 1,500,000 barrels.

Q. How do you figure that?

A. That is computed on the largest output for three consecutive months as shown by the Bureau of Mines' figures.

Q. Have you ever computed it in any other way?

A. I do not know any other way that it could be accurately computed.

27825 Q. Mr. McKee, Respondents' Exhibit—I mean Commission's Exhibit 1270-B to J is a photostatic copy of what purports to be a letter of Mr. William J. Jennings, dated January 10, 1929, addressed to a "Dear Mr. Merrill," and it starts as follows: "I have just returned from the meeting of The Cement Institute, which has been formed and is in operation in the Mid-West District. C. A. Irwin is Chairman of the Executive Board, along with the following committee of four." Then it gives certain names, and then it says further on in the exhibit: "Castilia had given their word to Mr. McKee,

of the West Penn Company, that they would join if the Institute was put over, and if the majority of the
27826 cement plants in the Mid-West joined up."

I am now asking you whether you know whether Mr. Mallory was present at that meeting, and I am referring to the meeting referred to in Exhibit 1270-B, dated January 10, 1929.

Trial Examiner Norwood: Now, answer that "yes" or "no."

The Witness: Your Honor, I will have to answer I do not recall.

By Mr. Leisure:

Q. Now, this exhibit refers to certain curtailment of production, Mr. McKee. Do you have any knowledge of any curtailment of production on or about that time?

A. I know of no curtailment of production at any time in our district.

Q. Were you at the meeting, Mr. McKee?

A. I can't recall that.

Q. Do you recall any discussion at or about that time—I notice there is the statement here as to "Mr. Jennings refers to remarks on curtailment of production and increased prices."

Do you recall any such discussion at that time in any meeting on or about that time?

A. I do not recall.

Q. I have another exhibit, Commission's Exhibit 597-A to D. This exhibit, Mr. McKee, purports to be a meeting of the cement industry March 14, 1934, and the ex-
27827 hibit purports to show that there was a discussion of a plan for sharing the available business.

Will you look at the exhibit and tell us whether or not you attended that meeting (handing document to witness)?

A. I am not sure whether I attended this meeting, or Mr. Binford attended it.

Q. There is a Commission's Exhibit here, 2917-A to blank, which purports to be a plan for sharing available business. Do you know anything about that, and whether it ever went into effect or not (handing document to witness)?

A. (Witness examines document.) Well, this—

Trial Examiner Norwood: Did any plan for sharing available business ever go into effect?

The Witness: No.

Trial Examiner Norwood: That answers it. Go ahead.

By Mr. Leisure:

Q. I have one of your letters here, which is dated April 7, 1934, Mr. McKee, and it is given a Commission's exhibit number, 571-5-E,-F. This letter refers to another letter of March 21, 1934.

Will you look at Commission's Exhibit 950-B, and tell us whether or not that is the letter you refer to?

A. Yes, it is.

Q. Now, your letter, I notice, dated April 7,
27828 1934, refers to allocation of shipments, and it says:

"Tremendous waste in cross-shipments estimated by the F.T.C. to be $50,000,000 in 1929."

When you say it would reduce cross-hauling, what did you mean, Mr. McKee?

A. Well, I meant that if the plan for sharing available business, as provided in Article VI of the Code, had been in effect, that we would naturally sell our cement at points where we had the least freight, and, therefore, would eliminate the cross-hauling referred to.

27829 Q. You also say here that "Allocation would eliminate absurd reciprocal arrangements."

What did you mean by that?

A. I meant that purchase of some products, such as coal, of maybe less favorable grade and price, because of such reciprocal arrangements, or the letting of small contracts without bids.

Q. When you say "absurd reciprocal arrangements," were you or were you not referring to relations between cement producers?

A. That would be between a cement producer and someone from whom he was purchasing material—a customer, not between cement producers, but between a producer and a customer.

Q. Well, when you used the term there, mentioned the waste of cross-shipments estimated at $50,000,000 in 1929, were you stating that as your own figures?—

A. No, I—

Q. —based on any study that you had made?

A. No, I can't give the source now. I think the state-

ment was made in some publication, but I am not able to name it.

Q. The letter shows that you were quoting from the F.T.C.

A. I think the statement was made in some pub-
27830 lication as a statement of the F.T.C., but I am not positive about it.

Q. Mr. McKee, with respect to this Commission's Exhibit 2917-A to blank, to your knowledge has there at any time since you have done business in your district, has there ever been any allocation of business?

A. There has not.

Q. When did the West Penn Company join the Institute, Mr. McKee?

A. I think it was very shortly after it was formed, but I can't remember the exact date.

Q. Has it been a member continuously since that date?

27831 A. Yes.

Q. Were you active in the formation of the Institute?

A. No.

Q. Have you ever served on any Institute committees?

A. I don't think I ever have. It seems to me I was appointed on some committee of either the Institute or the Code, which never met. I can't think what its name was.

Q. Were you ever an officer or trustee of The Cement Institute?

A. No.

Q. Now, as of the present time, do you receive statistics from The Cement Institute?

A. Yes.

Q. And what, if any, use do you make of them?

A. Well, it gives us an idea as to how much total business is being shipped, a general idea of how efficient our sales force is.

Q. What use, if any, do you make of the Bureau of Mines' reports?

A. Those reports are quite similar but they come in later than The Cement Institute reports.

Q. How long have you watched the Bureau of Mines' figures?

A. Oh, off and on since we have been operating.

Q. Well, now, Mr. McKee, how do you determine what you consider to be your share of the business?

27832 A. Well, we feel that we should get a percentage of the business which would reflect the relation of our capacity to the total capacities of the district, but we never have.

Q. Do you at the present time make the same use of the Bureau of Mines' and Institute's statistics that you have already described?

A. Yes.

Q. Now, in order to save some time, there has been some testimony here as to the timeliness of the statistics furnished by The Cement Institute.

I wonder if we can cover that in one question: Have you found it to be quicker than the other statistics—in other words, tell us just as briefly as you can what the facts are?

A. The Cement Institute's statistics come in considerably ahead of the Bureau of Mines' statistics, and, therefore, are more useful.

Q. And is that of any benefit or any advantage to you in your regular course of business?

A. It is, because it gives us a view of the situation sooner.

27833 Washington, D. C.,
December 1, 1939.

27834 F. C. McKEE thereupon resumed the stand and testified further as follows:

Direct Examination by Mr. Leisure (Continued).

Q. Mr. McKee, when we adjourned yesterday we were discussing these different services, Bureau of Mines and Cement Institute services.

How long have you taken or watched the Bureau of Mines' figures?

A. I believe ever since we started the operations.

Q. Without going into any number of questions on The Cement Institute service, perhaps I can cover it in one question:

There has been testimony here in the record to
27835 the effect that some of the companies use these statistics to check upon how their shipments compare with the shipments for the district. What is your experience with respect to that?

A. We do the same.

Q. And what has been your experience in respect to doing that—I mean, have you, since you have been in business, been able to increase your share of available business, or what is your experience on that?

A. Our shipments have fluctuated very widely with respect to the district shipments. They are less today than they were,—For example, in 1928 and 1929,—and they are also less than they were in the Code period, but they will vary widely from year to year as shown by our records there.

Q. And you told us you were one of the small defendant companies; is that correct?

A. Yes.

Q. I do not think you told us how many kilns your company operates?

A. Two kilns.

Q. Now, how do you use this service? I mean, if you find that you are going ahead or behind, does it affect your activity in any way, and, if so, how?

A. If we are going behind we question the efficiency of our sales force, and attempt to increase our efforts, but, as indicated by our past history, we still will vary
27836 very greatly from year to year in our relation to the general shipments due to a variety of causes.

Q. Well, now, in the use of these statistics in the manner that you have described, Mr. McKee, are you interested at all in the shipments of particular competitors in the district?

A. No, that's not a matter of concern. We are interested in what we are getting out of the total in the area that we can ship to. One competitor might have a lucky break by getting some large contracts, and that's not a matter of particular concern to us.

Q. Well, what do you, if anything, with respect to planning your operations in advance?

A. Well, we attempt to get all the business that we possibly can without putting on too many salesmen or

going too far afield for it, and, of course, in our operations we are guided by several things. If we merely operated with the question of costs in mind, we would run full and shut down for long periods, but we, most of the time, run on a basis close to 50 percent in order to spread the work and enable our men to carry on better over the year, and we also will break up our operating periods both for that purpose and also to permit us to pick up in certain special cements that are required from time to time that we might not be able to forsee a demand for a long period of shut-down.

27837 Q. Well, in planning this, do you or do you not have any operating schedules that you attempt to follow?

A. Yes, we plan our operating schedules because we cannot afford to be starting and stopping frequently. It is expensive to get a plant ready to go and to taper off, and every time you will put a kiln on and off you reduce the life of the lining that much. In the case of our kilns re-lining of the hot zone costs $10,000 alone.

Q. Does your plant, in planning these schedules,—do you operate continuously or what is the way you operate?

A. Well, we have to operate continuously over a period of a couple of months; otherwise, we would be hurting our kiln lining and running into a great deal of extra expense in starting and stopping operations.

27844 Q. Taking up another subject matter, Mr. McKee, what kind of process does your mill use,—is it wet or dry process?

A. Wet.

Q. And at the time it was built was a quarry located at the mill?

A. Yes, which we operated with former companies.

Q. And what is the rock supply,—just in a word?

A. At the present rate of operation, approximately enough for a hundred years.

Q. You have told us that you were interested in knowing what the amount of going business was in your district. Do you use the Institute statistics in any way in order to attempt to discover what any particular competitors are doing?

A. That is not a matter of particular concern because a competitor might secure—

Trial Examiner Norwood: Now, do you or do you not.

The Witness: I will have to qualify that state-
27845 ment to answer it correctly.

Trial Examiner Norwood: Go ahead.

A. Yes, but only for informative purposes.

By Mr. Leisure:

Q. What do you mean, Mr. McKee? I want to know how to you use it, if at all.

A. We merely have a casual interest in what an individual competitor may secure because there may be some lucky circumstance that causes him to go up at a particular period, but our real concern is our percentage out of the total available business in the territory.

Q. Does your company have any agreement with any of your competitors, based on the statistics furnished by The Cement Institute?

A. No.

Q. You said that you do not use the Institute statistics, except as you have explained. Do you use them as any guide in estimating what your requirements will be?

A. They are a guide in estimating what we may reasonably plan ahead for in the way of productions.

Q. Do you use them for any other purpose?

A. None that I can think of.

Q. Well, then, Mr. McKee, is there any difference between the use you make of the Bureau of Mines' statistics and the use you make of the statistics furnished by
27846 The Cement Institute?

A. No.

Q. I want to take up a Commission exhibit here, Mr. McKee, it is dated July 12, 1934—that is, the covering letter is—

Mr. Leisure: And the exhibit number is 598-A to I, Mr. MacIntyre.

Q. —and 598-B is dated July 10, 1934. It purports to be the minutes of a meeting of the industry held at Washington on July 10, 1934.

First, let me ask you, do you recall, did you attend that meeting, Mr. McKee?

A. If you can give me a little more detail as to what took place; I can't remember meetings by dates.

Q. Yes. Let me call your attention to the paragraph I

intended to ask you about, and that is the last paragraph on page 3, and it is marked Commission's Exhibit 598-D (indicating). See if that refreshes your recollection sufficiently to tell us whether or not you were at that meeting.

A. (Witness examines exhibit) Yes, I was present.

Q. This paragraph that I have called your attention to, on page 3, is a reference with regard to the protest against the executive order of June 29th permitting bids 15 cents below filed prices to the Government; do you recall that?

A. Yes.

Q. Do you recall that discussion?

27847 A. Yes.

Q. What was the position of your company with respect to that, Mr. McKee?

A. We felt that it was very unfair for the Government to sponsor a Code and then ask that it be made an exception to it; that it was unfair to our customers; it was unfair to us since we had raised our wages to the recommended minimum on rates and maximums on hours per week, shortly before.

27849 I would like to take up another Commission's exhibit, 571-5-E and 5-F, and also Commission's Exhibit 950-B. Commission's Exhibit 950-B appears to be an answer to Commission's Exhibit 957—that is 571-5-E and 5-F.

27850 With reference to those exhibits, were you acquainted generally with the criticisms mentioned in Commission's Exhibit 950-B?

A. Yes.

Q. What were the circumstances at that time? Will you tell us?

A. Well, there was considerable criticism of this industry in company with other industries by officials of the Government, and others.

27851 Q. What do you mean, Mr. McKee?

A. Criticisms of their methods of quotation, and of various practices of the industry.

Q. Was anything done with respect to that—or, let me make it short: What was the purpose of the Public Relations Committee?

A. The purpose of that, as I understood it, was to better acquaint the public with the problems of the industry.

and the reason that business was carried on in the way it was.

Trial Examiner Norwood: Let me see that exhibit.

(Witness hands exhibit to the Trial Examiner.)

By Mr. Leisure:

Q. Let me take up another Commission's exhibit, Mr. McKee; it is marked 408-W.

Trial Examiner Norwood: Thank you (returning exhibit to witness).

Q. I have here in my hand Commission's Exhibits 408-W, 409-S, 409-M, 409-O, and 409-Q.

With respect to those exhibits, Mr. McKee, were there any restrictions under the Code upon the kind of prices that you could file?

A. No.

Q. Well, as to your own company during that period, during the Code period, if a price was filed with the Code Authority was there any requirement, or did you feel
27852 that there was any requirement that you must quote the same price?

A. No.

Q. Can we sum it up without any number of questions in one question: Did the Code Authority ever attempt in any way to control what prices you filed?

A. No.

27853 Q. Let me change that, then, Mr. McKee:

I want to find out what your own attitude was regardless of what the Code may or may not have shown,—what was your understanding, either under the Code or outside of it as to what you had to do?

A. We understood we were perfectly free to quote whatever price and in whatever manner we saw fit.

Q. And without going into a number of detailed questions of the same kind as to terms and conditions, can we cover that by just one question: Did you feel, or was there any compulsion as far as you know, that the terms and conditions should be similar or the same as anyone else?

A. No.

Q. Or were you free to file any terms and conditions of sale that you wanted to?

A. We were free to file any.

Q. Now, do you file any prices with The Cement Institute or with any other organization today?

A. No.

Q. Let me call your attention to another Com-
27854 mission exhibit, Mr. McKee, 970-4-E and 4-I. I guess it is 3-Y and 4-I.

Have you got that, Mr. MacIntyre, 970-3Y, 4-I,—and I call your attention to one answer of yours to the Burns and Clark survey. Are you familiar with the circumstances of the preparation of those answers undertaken?

A. To a considerable extent.

Q. And what were they? Did you receive any questionnaire from Burns and Clark?

A. We did.

Q. Now, when you made the answers that appear there, including the one that I referred to yesterday, what was your purpose in answering this questionnaire?

A. We knew that there had been a number of extreme statements made by public officials and pronouncements by horse-and-buggy economists on this question, and we were glad to furnish any data we could to try to remove some of these misconceptions.

27855 Q. Now, going to another subject, Mr. McKee. On your prior appearance here as a witness when you were called by the Commission, at record page 10985, you were questioned about a dealer by the name of Mr. Joseph Criley, a dealer at Butler, Pa. You said you did not sell him because you did not, you had not satisfied yourself as to his financial responsibility, or something to that effect, and then you question whether or not, as far as your
27856 investigation had gone, whether his ability to do the best promotional job—do you recall that testimony?

A. Yes.

Q. What did you mean when you referred to the ability to do a good promotional job?

A. The investments of Mr. Criley in warehouses,
27857 trucks, and other things necessary to his business, was probably less than one-twentieth or thirtieth of the investment of the other dealers whom we were selling in Butler, and I know Mr. Criley was able to purchase other cements than our own. He only remained in business a short time, which justified our opinion.

Q. Now, taking up another matter.

The Commission has offered in evidence here a letter from a Mr. R. A. Bathgate to Mr. Letzkus, dated January 4, 1936. In the last paragraph of this letter Mr. Bathgate

refers to the notification of dealers of your company (handing document to witness).

What do you know about that, if anything?

A. The letter is dated January 4th, and at one point makes a statement that these quotations were made on the cement company's regular printed forms showing an advance of 15 cents per barrel effective January 8th.

If was quite a general practice to give notice of advance in price 5 days ahead of the time, and the letter would indicate that such a notice was given, dated probably January 3 and effective the 8th, and on January 4th
27858 some of these dealers, two of whom are very close friends, may have called me and said, "We have a notice of an advance," and I may have said—having utmost confidence in their truthfulness—

Trial Examiner Norwood: Well, I think you better state what they did do, and what they said. You are speculating there.

The Witness: I think that they called me. I think that Mr. Herbert Geist called me and said that he had received a notice of advance, and believing in his truthfulness I said, "We will meet the advance," and we had our man covering Cleveland check the matter, and we phoned the only other dealers that we—the only two dealers that we sold in Cleveland—of the fact that we would make this same increase effective on the same day, January 8th, in order to give them sufficient time to requote customers, and that information would be in their hands if Mr. Bathgate called on January 4.

By Mr. Leisure:

Q. How much notice did your dealer have as to price change on this particular price change?

A. He would have four days.

Q. Let me call your attention now, Mr. McKee, to another Commission's exhibit having to do with your company. I have reference to Commission's Exhibits 1124-A to G, and direct your attention to the second page
27859 where the name of your company appears (handing documents to witness).

(Witness examines documents.)

Q. Also, in connection with that same exhibit, Commission's Exhibit 2765, being a letter from Mr. Korey to Mr. Byrne, dated August 11, 1930, in which your company is

mentioned, and Commission's Exhibit 2766, being a letter from a Mr.——do you know who "M.F.B." is?

A. That's probably Mr. Byrne.

Q. —apparently from Mr. Byrne to Mr. Wole.

A. I believe that is Cole, C-o-l-e,—G. W.

Q. Mr. Cole?

A. Who was the traffic manager at that time.

Q. Dated August 7, 1930, in which your company is mentioned also in the first paragraph (handing document to witness).

(Witness examines document.)

Q. It appears from those exhibits, Mr. McKee, that you had a base at your plant; is that correct?

A. I do not recall having a base at our plant. There are several things about these exhibits that are significant. The letter of the Lone Star Cement Company is dated July 28th, and it lists West Winfield as having a base of 1.75 f.o.b. cars, and a letter of Mr. Byrne, of Medusa, dated August 7, reports West Winfield as having a base of 1.80 f.o.b. cars, but states—

Trial Examiner Norwood: Now, are you going to make that a basis of some factual statement, or are you
2786 merely arguing the case?

Mr. Leisure: No.

The Witness: Well, I was noting as a part of my statement—

Mr. Leisure: The point of the question is—

Trial Examiner Norwood: Leave that for the Counsel. They can do it better than you.

Mr. Leisure: The point of the question is, Your Honor, these exhibits show one thing, and I want him to explain what his situation is with respect to that; that is all.

Trial Examiner Norwood: Well, you can let him explain his situation, but I know the Counsel can show the Commission what they mean much better than this witness.

By Mr. Leisure:

Q. Without summing up the exhibits, tell us what your position is with respect to those exhibits. I think you will have to refer to them, however, to tell us that.

A. Yes. I do not recall having a base, and had we had a base it would not have meant anything since the only point that it would have met as the low figure would have been West Winfield, at which there was no dealer and at which we made no shipments.

Q. Well, I still do not understand, Mr. McKee, from those exhibits, how do you account for the fact that two of your competitors here indicate that they considered
27861 West Winfield to be a base?

A. I think that probably—I believe that Byrne figured we had a base because the same figures of $1.80 base are shown for the other western Pennsylvania points outside of the Pittsburgh district.

Trial Examiner Norwood: Well, wouldn't that, in effect, make you a base?

The Witness: No, it would not. He having a $1.80 base at his own plant at Crescentdale, and there being a $1.80 base which he had picked up at New Castle, he concluded that probably we had the same base, but on account of there being no dealer at West Winfield he was not able to check it, and the same thing applied to Lone Star and the inability to check by dealer caused them both to come to the wrong conclusions.

By Mr. Leisure:

Q. You have told us, Mr. McKee, that you calculated some delivered prices in the field from the basing points affecting your territory. What are the basing points included in these lists which you say you do make up?

A. All of the last known so-called basing points within or directly adjacent to the territory in which we solicit business.

Q. Well, do you know which particular mills are basing points at any given time?

27862 A. All that we know is what were the last basing points, according to information we have been able to gather.

Q. Have you ever received any list of basing points from The Cement Institute?

A. No.

Q. And have you ever given—you have told us how you make up your own list of basing points. Have you ever given any list of those basing points to any of your competitors?

A. No.

Q. Going to another subject, Mr. McKee: There has been testimony in this case about a committee on future activities, a committee of The Cement Institute. You have told us that you have been a member of The Cement Institute since the beginning.

Do you consider The Cement Institute to be of any value to your company?

A. Yes.

Q. What particular value do you—what services does it perform, as far as you are concerned?

A. It furnishes us freight rate compilations which would cost many times as much if we prepared them in our own traffic department. It furnishes us statistics, and it did furnish us for a time with records of contracts which avoided duplications, and the stocking up of special cement on contracts on which other parties shipped.

Q. Taking up another Commission exhibit; Commission's Exhibit 14, Mr. McKee. Will you tell us
27863 whether or not you had dealers at those points?

A. We had dealers at three of the points on the first exhibit; namely, Huntington, Meadville and Brookville, and we had no dealers at any of the points shown on the second exhibit. I have not identified it.

Q. Were there any points at which you did not? Tell us what those are, will you?

A. The ones at which we did not have dealers were Parsons, Norristown, Wellsboro, Easton, Duria, Shickshinny, that is all.

Q. Now, will you refer to Respondents' Exhibit No. 1420-A to blank; and tell us what use, if any, you made of that exhibit in quoting the prices at those points?

A. Well, in quoting Huntington, Meadville, and Brookville, we were able to save time by copying the figures as we had on this ready reference office price list directly to the bid, avoiding the calculation of prices from last known reports and freight rates.

Q. Now, at the points which you called off, Mr. McKee, as not having dealers, how did you arrive at your prices?

A. Well, those—that was a conclusion based on the fact that at other points in those territories we had found delivered prices which were apparently made up from a certain so-called base price plus freight rate to destinations, and we took the same so-called base price and figured the freight rate to these new destinations and
27864 thought the probabilities were that that would be the price quoted.

Q. I want to call your attention to another Commission exhibit, 549-2-C; Mr. MacIntyre, could I have your copy of that?

Have you got a copy of that exhibit?

(Mr. MacIntyre hands exhibit referred to to Mr. Leisure.)

Q. This purports to be a letter dated September 12, 1933, to Mr. H. D. Raff, president of the Diamond Portland Cement Company. There is no signature. It has "vice-president" on it. Did you write that letter?

A. Yes, that was evidently my letter.

Q. What were the circumstances under which you wrote Mr. Raff that letter, if you recall?

A. We felt that it was unfair for the Code Authority to increase the classes of buyers to be selected and to make it mandatory because the proposals were for selling direct a greater number of classifications than we did in our own policy, and I wrote Mr. Raff as a friend, and I believe that—well, just to acquaint him with my views on the subject.

Q. I want to take up another Commission's exhibit, 1320, Mr. McKee.

Do you recall the circumstances of that exhibit, Mr. McKee?

27865 A. Not very distinctly, other than there was a report by the Davison Coke & Iron Company for very low switching rates from their plant to point destinations in Allegheny County, Pennsylvania, and that we requested that if such switching rates were granted we be given proportional reductions to the points involved from our plant.

Q. Did you take any action on it, Mr. McKee?

A. Yes, we joined—rather, not joined—but we requested the railroads individually and petitioned also formally for such adjustment.

Q. Did you consult with your competitors, either individually or in any other way prior to taking this action?

A. No, it was an individual action, although, as I recall, there were some other companies who asked for the same adjustments, but not all in our district asked for those adjustments, if I remember correctly.

Q. Did you ever have any warehouses in Pittsburgh?

A. No, we leased a warehouse but didn't use it; instead, hiring truckers and delivering cement in by truck to meet the last known destination prices in various sections of Pittsburgh delivered by truck, the same as we would endeavor to meet a price that we found for delivery by rail.

27866 Q. Mr. McKee, I want to call your attention to another Commission's exhibit, No. 15, which purports to be a letting for the Commonwealth of Pennsylvania, Department of Property and Supplies (handing document to witness).

Are you familiar with that letting?

A. Yes; as being one of a number of similar lettings at which bids were accepted for cement.

Q. Did you have a dealer at that point?

A. At Renova, yes.

Q. Did you or did you not know what the going price was at that time at Renova?

A. We did.

Q. Did you have a consultation with any of your competitors before you submitted that bid as to what you would or would not bid?

A. No.

Q. Now, without going into it in detail, there has been testimony here to the effect that some companies, when they know the going price, they quote the market price at that place when they bid to the Government.

What did you do with respect to that, in this instance?

A. We quoted the same price to the State as we had been quoting to the Government, and that price had evidently been the lowest price because the dealer had been regularly purchasing from us at that price.

27867 Q. What has been your experience with lettings of that kind? What have you found, if anything, as to whether the Government makes its awards on the basis of prices bid f.o.b. bill, or on the basis of a total cost at destination.

A. On the basis of a total cost to them at destination.

Q. The Commission's Exhibit 373-A and B is a letting of June 12, 1936, at Chillicothe, Ohio.

Did your company bid on that letting?

A. Yes.

Q. And are you familiar with the circumstances of that bid?

A. Yes, in a general way, as near as I can recall that long ago.

Q. Now, without repeating any of your previous testimony, can you tell us just briefly whether or not you arrived at your price in that instance—

A. In the same way—

Q. —in a similar way?

A. —as I have described.

Q. In the same way that you have previously described?

A. In the same way that I have previously explained.

Q. I want to call your attention to Commission's Exhibit No. 1089, which is an abstract for lettings dated July 21, 1936, Coshocton, Ohio.

Mr. Leisure: Mr. MacIntyre, this is an abstract,
27868 —some of these bids were marked for identification. Have you the bids on those? Were they marked and kept?

Mr. MacIntyre: What is the number of that one?

Mr. Leisure: 1089.

Mr. MacIntyre: I do not believe I have that.

Mr. Leisure: I will use the abstract. I think I can get along with the abstract.

By Mr. Leisure:

Q. Mr. McKee, I do not have the bid here on this, but this is the abstract. Can you tell from that? Can you refresh your recollection and tell me whether or not your company bid on that letting?

A. Yes.

Q. Do you recall the circumstances of that letting?

A. I see by the exhibit that our price was $2.18 as against the low prices quoted by others of $2.12. I believe that we did not have accurate information as to the last quoted price, or in making our mathematical calculations we made an error.

Q. And do you— What happened with respect to that bid? Did you get the letting, or any part of it?

A. No, we received none; we received none of the cement purchased.

Q. Had you previously quoted at that point, Mr. McKee?

A. I am not sure about that.

Q. In sending your quotations—what is the number? 1089?

27869 In sending quotations to dealers at those points, can you tell us whether or not your quotations contained high early strength quotations as well as standard Portland cement quotations?

Mr. Paulson: That is objected to; immaterial.

Trial Examiner Norwood: Objection overruled.

A. On the form that we generally use we have blank spaces for four kinds of cement, and we fill all of them into dealers and to other customers only those items that apply.

By Mr. Leisure:

Q. Taking another subject, does your company today assume any risk for the loss and damage to goods while they are in transit?

A. Yes.

Q. What is your regular practice with your customers? Do they or do they not look to you for adjustment of damage in transit?

A. They look to us for adjustment and submit papers to us and we file the claims.

Q. And do you or do you not take it up with the railroads?

A. With the railroads.

Q. And while the cement is in transit? How do you treat it? Do you treat it as your property or the property of the consignee?

A. We treat it as our property.

27870 Q. And how long has that been so with your company?

A. That has always been true since we have been operating.

Q. Mr. McKee, as to these different activities,—and I have in mind your terms of sale, trucking, and all of these matters, that you have testified about,—to save time in one general question, have you had any agreement or understanding with your competitors with respect to any of your activities whatsoever?

A. No.

Mr. Leisure: That is all, Mr. McKee.

Trial Examiner Norwood: Cross-examine.

Cross-examination by Mr. Paulson.

Q. Mr. McKee, showing you Respondents' Exhibit 1420-A—that is the exhibit, Your Honor, on which we had some voir dire yesterday.

Trial Examiner Norwood: Yes.

By Mr. Paulson:

Q. Can you tell me, Mr. McKee, whether the $2 price which you said was arbitrary in certain counties in Penn-

sylvania was above or below the destination price figured on the lowest combination of basing point plus freight?

A. It was below.

Q. And do you recall how much below?

A. No, I do not recall because that would vary according to the particular destination in the county.

27871 Q. What county was it?

A. Allegheny County.

Q. Did the arbitrary cover just one county?

A. No, there were some arbitraries at some border destinations, in counties adjoining Allegheny.

Q. Is there any large city in Allegheny County?

A. In Allegheny County?

Q. Yes.

A. Pittsburgh.

Q. Is that the only arbitrary in your sales territory?

A. No, there are arbitraries in Baltimore and Washington.

Q. Is Pittsburgh and surrounding area still an arbitrary?

A. Yes.

Q. Is the extent of the arbitrary zone equal to the metropolitan area of Pittsburgh and the switching limits?

A. The extent of the arbitrary zone is larger than the City of Pittsburgh. I can't recall definitely what the switching limits are, but I believe that the arbitrary area is larger than the switching limits of Pittsburgh. Now, by "switching limits"—

Q. Well, then, it isn't the switching limits that determine the boundaries; is that right?

A. Well, I can't tell what determine the boundaries.

Q. You don't know what determines the boundaries of that arbitrary?

27872 A. No.

Q. Is that arbitrary still—

A. Still—

Q. —prevailing?

A. —in effect when I left Pittsburgh last.

Q. How long? When did it go into effect, do you recall?

A. I don't remember; it has been in several years.

Q. It says "effective 11-15-37" in this exhibit.

A. Yes.

Q. Is that about right?

A. Yes, its—that's our office book—that's the date, as nearly as we could find that out.

Q. What explanation have you to offer for the establishment of the arbitrary at Pittsburgh?

A. Well, I don't know; I am not a mind reader.

Q. You have no explanation?

A. I have none.

Q. How long did it take you to ascertain the extent of that arbitrary from the time that you first found a quotation to base point formula at Pittsburgh?

A. The extent of the—of what we termed the flat price of $2 in Allegheny County, we found very quickly, because a large number of dealers at different destinations in the county called us and we checked others immediately, but it is very distinct in my mind that we did not learn of
27873 all of the points on what would be termed the feathered portion of the territory for some time, and would pick them up one at a time.

Q. About how long would you say, Mr. McKee?

A. Oh, over a period of some days, how many I don't remember; it is two years ago.

Q. Are there still some points in dispute?

A. Well, all that I can say is that we have found no evidence of that as indicated by inability to sell at the prices that we have been quoting, but there may be sales that were missing that I am not aware of the cause.

Q. Does any company—any one of your competitors—put out a price list to its salesmen showing the extent of that arbitrary zone and listing the prices at the various suburban points?

A. I don't know.

Q. You have never seen such a list?

A. I don't think so.

Q. You would have seen it if it had come to your company, would you?

A. Oh, yes, I think I would.

Q. And you do not recall ever having seen such a list?

A. I don't recall that.

Q. Are some of the suburban points within that arbitrary zone now on a price basis above the lowest combination of base point price plus freight?

A. Well, now, what do you mean by suburban towns?

27874 Q. Well, what I want to find out, Mr. McKee, is whether or not that $2 flat price represents more or less of an average of the prices that would have prevailed had there not been an arbitrary,—assuming, of course, that the base point—

A. I am quite satisfied that the $2 represents a reduction at all points in Allegheny County, over the previous quoted prices, with this exception: I believe that there are a few points served by the Union Railroad on which the freight rate—well, I am not sufficiently clear about that—I can say, though, very distinctly, that the $2 flat price represented a reduction from the previous prices being quoted in Allegheny County, I believe.

Q. Has there been some reduction in controlling basis since then?

A. No.

Q. How did you, in pricing your product around these arbitrary zones, determine where the feathering should stop?

A. Well, we do not determine that. We discover the situation. I do not know how that was determined.

Trial Examiner Norwood: Isn't there any common factor there?

The Witness: Do you mean, Your Honor, as to the reasons that might suggest themselves?

Trial Examiner Norwood: Yes, yes.

The Witness: Well, I could see this, that if you
27875 had a $2 price at a destination in Allegheny County on the border of another county, and that a mile or two beyond in the other county there was a considerably higher price, the dealer at the point in the other county might be under some handicap by reason of the abrupt change in price in relation to the distance involved.

By Mr. Paulson:

Q. Well, we have had considerable testimony here, Mr. McKee, tending in the direction of proving that manufacturers must accommodate dealers who are situated adjacent to each other in order not to put them to disadvantage one against the other.

A. Yes.

Q. That accounts for the feathering. I was just wondering—I wanted to find out from your experience whether or not geography of the country and the locations of the

towns provides you a suitable stopping place in that feathering process, or whether you have to draw the line arbitrarily somewhere.

A. Well, of course, as I answered you before, we do not do the feathering process. I am just giving you a guess as to a reason that might have influenced those who first so quoted.

Q. Well, then, tell me in your experience have you found that there are still many dealers around the edge of metropolitan area who are at a disadvantage as against those nearer in to the metropolitan area, for instance?

A. I have heard no such complaint for at least,
27876 oh, a long period past.

Q. Am I right in thinking that there is bound to be a disadvantage to one dealer as against another dealer notwithstanding the feathering out?

A. I do not believe that the present situation is placing a hardship on any dealer or he would continue his complaints. What, as I recall, not very distinctly, there was on the part of a few dealers a little discussion of the matter at the time that we ran into—but, of course, when any price changes, either up or down, dealers are bound to be dissatisfied. If it goes up, they claim that it will affect them adversely, and if it goes down it will cause them a loss in their inventory, so that there is nothing but little more than the usual discussion that takes place.

Q. Mr. McKee, you said on direct that your salesmen maintain a constant vigilance to ascertain changes in prices.

How often in the last 12 months, let's say, have your salesmen reported change of price in your sales area at any one of the destination points?

27877 The Witness: I cannot recall any changes reported to me except up around Cleveland, the salesmen—

By Mr. Paulson:

Q. What was that change?

A. (Witness continuing.) —vigilance—well, I am trying to think details. We do not ship very much into Cleveland. There is only one dealer in Cleveland who has bought any West Penn cement for the past year.

Q. You do not recall any other outside of the Cleveland area?

A. No, I do not recall.

Q. How about the preceding 12 months?

A. My memory is not that good to tell, to remember these by dates, in all these territories.

Q. No, I could not expect you to, definitely.

A. I can remember our method, and the method is this, that the salesmen are instructed—

Q. No, I am not asking you about the method. I just want to know,—I just want to get a general idea as to how many price changes you find coming into the picture from year to year?

A. Well, to give an accurate report on that I would have to go back over those same books for the dif-
27878 ferent States to refresh my memory on that.

Q. On the whole, would you say that prices in the sales area in which you operate follow the base point plus freight pattern exclusively, would you not?

A. Yes, I think so.

Q. You have said, Mr. McKee, that you keep a running record of prices at various destinations, and that as I understand it in the main your running record is a compilation made up from reports by salesmen as to the prices at a given destination. Is that about right?

A. Salesmen and dealers.

Q. Yes, salesmen and dealers.

A. The dealer is our original source of information, and having a good many close friends among them I presume that we hear more often from friendly dealers that they have a new quotation, than we do from the salesman, because the salesman may have a territory that embraces a number of dealers, and there may be two or three of those dealers call me up before the salesman does, and tell me, "I got a price from so and so of so much," and "Are you going to meet it?" I will begin to check around and then call them back, "Yes, that is right, we are going to meet that."—

Q. Yes, you said that, and then you also said that you kept in your office, a tabulation of destination prices for convenient reference to answer telephone calls.

27879 A. Yes.

Q. And you said that that tabulation was made up by adding freight rates taken from either your traffic department, or the Institute books, to known basing-point

prices; isn't that correct? You said you made up your office records in that way.

The Witness: Yes.

By Mr. Paulson:

Q. Yes.

Now, it seems to me, Mr. McKee, that your testimony there is conflicting, and I want to know which one you give the greater weight to, because in one instance you say that your information as to prices comes from the field, and in the other you say you made it up from the freight rates at the basing point.

Isn't it true, Mr. McKee, that your guide to prices at a destination point in the sales territory in which
27880 you operate is base point plus freight.

A. No, sir; it is not. The difference there is a difference in time. The original source are the figures in the field; the list that we have in the office of the last so-called base points is merely a convenient method, like that book in the exhibit, of keeping track of what we think are the last, and, therefore, the last known prices, and the present prices that we are planning to quote—

By Mr. Paulson:

Q. I understood your testimony, that you have no way of finding out about a change in price except from the field. I understood you testified that the manufacturers—your competitors—don't tell you when they change a price. But I am asking you if it is not your principle—if the basing points plus freight rates is not your principal guide to prices existing at destination points.

A. Well, it is the principal method, just as this book that you have is the principal method by which we
27881 quote the dealers; in other words, it is the last stage in a process, but that does not mean that that is the source. The important thing—

A. (Resuming.) —is the source, and this is merely a matter of convenience that we make up a list of base points, and we make up a list of dealer destinations, and the two are analogous and prepared for the same purpose—

Q. Your dealer information—

A. —that is convenience.

Q. —is more your source of price changes?

A. No.

Q. —than your record as to existing prices?

A. Yes, the dealer information is the source of price changes.

27883 Q. That is what I am wondering, whether or not you would vary your general policy for one or two sporadic announcements like that.

A. Our general principle is to not make exceptions to our general policy either of pricing or of dealing with our dealers, because it generally makes for dissatisfaction with the customer.

Q. That is generally what you have observed as to the practice of your competitors, too, is it not?

27884 A. (No response.)

Q. They don't just switch off and on the basing-point formula—

A. Not generally, although there seem to be quite a number of indications of exceptions to that.

Q. Wasn't that more true in 1930 and 1931 than it is today?

A. Well, there were cases in Ohio last year where we were offered and turned down business that was offered at rather—

Q. I had one more question on that line, Mr. McKee. Perhaps your first notice of a price at Bethesda, take, for example, would come from a dealer there, and, as you say, you would want confirmation of that. I think on direct you said you send your salesmen—I have a note to that effect—send your salesmen to investigate; in the event that you have no salesmen in that territory, wouldn't you rely on the freight rate book and the basing-point information you had as to the price that existed there?

A. Well, we wouldn't—we would have to do that—we are getting quotations daily from a lot of points, and we can't have a salesman check with each point each day, neither can we phone them, and the list of so-called basing points, and the freight rate books, are simply a means of doing the thing conveniently, and inexpensively, on the theory that maybe this price will be low enough to get us the business.

Q. In determining the price at a destination

27885 point, do you take the freight rate which your traffic man has ascertained to be the rate from a study of the tariffs, or do you take the rate out of the freight rate book?

A. We take the rate out of the freight rate book for this very good reason, that our traffic man is located in Pittsburgh for contact with the railroads on movement, and he only spends part of his time on traffic work, and we have had to reduce our office force at Butler to the point where we cannot go through tariffs and watch supplements, and we take the Institute freight rate book as a matter of convenience. We never even check the tariffs against the Institute freight rate book, because we have not time for us to do it.

Q. Well, what assurance do you have that the competitor who established that base in which that particular destination point is located has not used a rate which his own traffic department has ascertained from the tariffs and which might be in variance from the freight rate book rate?

A. We haven't any assurance, just as we have no assurance when we quote any price, that that will be low enough to get the business.

27886 A. I believe that we have found some prices at odd times that were neither, could be figured on the basis of the freight rate book plus so-called base, or any arbitrary, that we either knew at the time or were able to check immediately thereafter.

By Mr. Paulson:

Q. Would you call that to the attention of the freight rate bureaus, immediately,—that situation?

A. We were not sufficiently sure about it, and we had too many other things to do to ever do that, and it happened in only rare cases, and when you are busy selling cement and there are new propositions to follow every day, we were not sure enough that we were right, and we

27887 did not have force enough to check tariffs and even check it up.

Q. Ordinarily, from your experience, would you assume that the destination price is made up with one of the factors being the rate in the freight rate book?

A. We figure the probabilities are that is the case.

Q. Mr. McKee, while we are talking about freight rates and freight Institute service, did I understand you to say that the Institute service represented a substantial savings to your company?

A. It does.

Q. Do you know what you pay for that service each year?

A. I cannot give you those figures accurately, because my time is taken up with sales, and I do not remember—I do not remember all the accounting figures. I do know this—

By Mr. Paulson:

Q. It is over a thousand—

Mr. Leisure: Let him answer.

Trial Examiner Norwood: Answer it.

A. I do know this, that before the Institute was in operation we had a traffic man, an assistant, and a stenographer—

By Mr. Paulson:

Q. No. You are going beyond my question.

A. I am trying to answer your question.

27888 Trial Examiner Norwood: Wait. The question was whether or not you remembered how much you paid the Institute for this service. Answer that.

The Witness: I do not remember the exact figures.

By Mr. Paulson:

Q. What is the approximate figure, Mr. McKee? Is it a mill rate per shipment or per barrel, is it not?

A. Yes.

Q. It would vary from year to year?

A. I won't hazard a guess on it. I remember distinctly, however, the comments of our people as to the large saving, and I discussed it and knew those figures at one time.

Q. Well, we will come to whether or not there is a saving, but I just want to find out now as a basis of comparison, what is the amount that you pay to the Institute for the freight rate service. You can give us an idea of that, can't you?

A. I will not make a guess on it because I have not a close enough memory of what that figure is.

Q. Well, that will appear from the record, because, as I recall it, it is a mill rate, and your shipments are known, so I suppose we can get that.

A. Yes.

Q. But, Mr. McKee, in the course and conduct of your business, do you make out invoices?

A. For cement shipped?

27889 Q. Bills-of-lading, yes; for cement shipped.
A. Yes.
Q. Is it an invoice you make out?
A. We make out an invoice to the customer and a bill-of-lading to the railroad.
Q. Well, do freight rates appear on the bill-of-lading, or the invoice?
A. Yes.
Q. On both?
A. Yes.
Q. And where do you get the freight rate that you put on the invoice, let us say?
A. Well, they can come from—
Q. No.
A. Well, now, I do not make the invoices out personally. All I can state is that the Institute freight rate books and railroad tariffs are kept in the same desk. They have to refer—they have to have the railroad tariffs there in order to check the routing which is not shown in the Institute freight rate books; also, the Institute freight rate book only shows the lowest rate to a destination, and—
Q. That is on a minimum car, too, isn't it?
A. No.
Q. If you were shipping more than a minimum car you could not use the freight rate in the Institute book, could you?
27890 A. Well, the freight rate in the Institute book is shown in cents per hundred pounds.
Q. On a minimum car, but the railroad has a different rate when you ship over that amount, or under that amount, per hundred?
A. No, the rate is—we only ship minimum carloads.
Q. You do ship cars of cement containing more than 432 barrels, do you not?
A. Yes.
Q. But in regard to the information that has to go on the invoice, that is the freight rate information that has to go on the invoice, I want to know whether or not you know whether you, your clerk, gets that from the
27891 tariffs or from the Institute books? First, tell me if you know.
A. I do not know in each case. I believe that they get them from both, according to convenience. In a case where a destination is served by a single railroad, and the clerk

through familiarity knows that it is quicker to look into the Institute book and get the rate per hundred pounds than it is to look up the station and get the station number and look up the rate; but in the case of a destination which is served by two railroads, and our rate is higher over one road than another, it is then necessary to check the tariff in order to find the routing, and the rate which may be higher by the route we use than the Institute rate.

Q. Do you know what percentage of stations through which you ship are on a single railroad out of your mill, spur, there?

A. Well, of course, a very large percentage, but I would not make a guess at that.

Q. Now, when you invoice your customer you let him pay the freight and then you deduct from the invoice the freight that has been paid.

A. Yes.

Q. So that freight, the amount of freight paid, refers directly on the mill net, doesn't it?

A. Yes.

Q. And if there is an overpayment of freight you would not get your mill net?

27892 A. Yes.

Q. And, in view of that, do you make as a business practice, do you make a very close check of freight rates for that purpose?

A. As a matter of fact, we haven't time to, with our force, and the possible percentage of error and loss involved, we figure is less than the cost of doing such checking, and if we put in too low a rate by mistake, failing to check some supplement to a tariff, the customer very quickly calls it to our attention. We then make an investigation. And if we put in too high a rate most customers are on us and also call it to our attention, so that it is a question of relative cost to checking.

27898 Q. And your billing clerk or shipping clerk checks the freight rate from the railroad tariff, doesn't he?

A. Sometimes from the tariffs and sometimes from the freight book, as I testified.

Q. Mr. McKee, would you say that your conferences and discussions with dealers and with the competitors regarding dealer problems had had no effect or influence on your dealer policies?

A. We do not have conferences with competitors on dealer policies.

27901 Q. Well, you say they have not had any influence on your policy, do you?

A. Well, now, which do you mean by "they"?

Q. Dealers and competitors.

A. No. Dealers have had some influence on our policy.

Q. Competitors have had no influence on your policy?

A. Any individual with whom we come in contact, who brings to light a fact that might have a bearing on a subject, does to a remote and maybe minute extent influence any man's policy.

Q. You have never met with your competitors, I take it, for the specific purpose of discussing dealer policies?

A. No.

27904 Q. Isn't one of the problems of the cement industry—let me put it this way: Hasn't the cement industry considered it is faced with a common problem in that the public has come to regard it as an industry replete with conspiracy, so to speak?

Q. Don't you feel that that is a common problem that the cement industry has to meet?

A. Well, the fact that we are co-defendants in this case is probably an indication of that.

Q. Before this case was begun didn't you feel

27905 that there was need for educating the public?

A. I think various individual members felt there was a good time—

Q. I am asking you, did you feel?

Trial Examiner Norwood: He is asking you.

A. I felt there was, yes.

By Mr. Paulson:

Q. Don't you know that there was a committee of the Institute appointed to educate the public, so to speak, as to that point?

A. I believe there was.

Q. That committee was known as the Committee on Public Relations, wasn't it?

A. I think so.

Q. Didn't you write to that Committee on Public Relations on April 7, 1934, and recommend that common action by the cement manufacturers be taken and ironed out through mutual dealer problems?

A. Yes, I guess I did, and that was also in the Code period, as I testified before.

27908 Q. And didn't you on several occasions cease to sell cement to a dealer to whom you had previously sold because a dealer organization was opposed to your continued selling?

A. No.

Q. You recall of no instance when that happened?

A. There was no instances in which we ceased to sell to a dealer because a dealer organization was opposed.

We are constantly changing the dealers, adding new dealers and taking dealers off our lists for various reasons.

Q. Wasn't there a time during that period when you would not engage a dealer if the dealer organization opposed it nothwithstanding the fact that otherwise he would have been acceptable to you?

A. I have—there was not. I have testified the

27909 reasons why we solicited information on dealers as we would solicit credit information from Dun and Bradstreet.

Trial Examiner Norwood: Wouldn't the dealer associations give credit information on their members?

The Witness: No, but we got our credit information from Dun and Bradstreet, but that did not show us whether the dealer was properly equipped and spending his main portion of his time on the building supply business, which was quite as important.

By Mr. Paulson:

Q. Couldn't your own salesmen find out how he was equipped?

A. I cannot check on our own salesmen in all cases. Sometimes we would receive an inquiry, we will say, from one end of the State of Ohio, and the salesman would be in the other. We only have one man in Ohio, and it was necessary for us to try to get some unbiased information as quickly as possible.

Q. Did you have a dealer in Butler, Pa., at any time, named Criley?

A. No.

Q. You have never had?

A. We have never had.

Q. Did you ever sell a man by that name cement?

A. No.

Q. In Commission's Exhibit 571-5-E, which is a letter by you to Mr. B. F. Affleck, this statement appears:

27910 "One of the influences tending to prejudice public opinion in the past few months has been the controversy with the building supply dealers over distribution policy."

In what way was the controversy— Well, first, let me ask you, what was the controversy with building supply dealers that was going on at that time?

A. As nearly as I can recall, it grew out of the opposition of the Builders' Supply Code Authority to the Cement Code Authority in connection with a portion of the Cement Code relating to distribution, and I cannot recall whether at the date of that letter the argument was still going on between the Code Authorities or the bad feeling created was still going on between individual dealers and individual cement companies.

Q. How would that controversy prejudice public opinion against the cement industry? What was your feeling about that when you wrote the letter?

A. Well, in any controversy there are natural criticisms made, and any such criticisms, whether justified or not, helps to prejudice public opinion.

Q. In the next sentence in the letter you say, "It would appear that every effort should be made to effect a reasonable compromise between the two positions as speedily as possible with the thought that even though some features might not be entirely satisfactory to one side or the other, the settlement would be preferable to the continu-

27911 ance of the present indefinite policy."

What was the position of the dealers you had in mind?

A. Well, as nearly as I can recall, the portion of the Cement Code relating to distribution had been removed at the request of the Building Supply Dealers' Code Authority which left the matter in a state where there was some feeling on the part of both dealers and manufacturers.

Q. At that point in your history there was a definite unsettled condition as regards to dealer policies, was there not,—that is, April 7, 1934?

A. Well, I do not recall whether there was an unsettled condition. There was the mental condition remaining from this argument.

Q. Well, you did not have any dealer policy at that point, did you?

A. Yes, we had a very definite dealer policy and had made no change in it.

Q. Was your policy printed?

A. No.

Q. How would you sell—well, do you recall your policy at that time quite definitely?

A. Fairly well. I believe that we were quoting all projects through dealers with the exception of direct purchases by the Federal Government, State Highway Department, and railroads.

27914 Q. Mr. McKee, further on in this letter you said that "Students were still being taught the old Economics of Scarcity of Adam Smith instead of the necessity of regulated distribution to take care of permanent overcapacity."

Mr. Leisure: Which paragraph is that in, Mr. Paulson?

Mr. Paulson: That is on page 2 of the letter, Commission's Exhibit 771-5-F.

(Mr. Leisure hands a document to the witness.)

27915 By Mr. Paulson:

Q. What did you have in mind when you wrote "regulated distribution"?

A. That referred to what I believe was Article VI of the Code, "Plan for Sharing Available Business."

Q. Do you believe that the cement industry is an industry which can stand free competition?

A. It is an industry that is standing free competition. I would not say that there might not be other better methods, but they have not been used.

Q. What percent of your sales are made to contractors direct?

A. About 40 percent.

Q. Do you find any price cutting by manufacturers in selling to contractors?

A. Well, we have had reports that would indicate some possibility of that.

Q. Do you follow the base-point formula in quoting contractors?

A. Yes.

Q. Do you have a printed or written policy with regard to price decline and price rises?

A. We have no written policy other than in our contracts there is a decline clause which states that if the price declines the contractor shall receive the benefit
27916 of the current price. I think that is the expression.

Q. Did you draft the contract you are now using for sales on specific jobs?

A. I think that contract is copied from the Code—the suggested form of contract in the Code.

Q. How many contract forms do you use in connection with the sale of cement, classifying them, if you can?

A. Just two. There is a form that we use in a contract with a dealer who is re-selling to a contractor, and a different form in which we contract with a contractor who is purchasing direct. Now, those two forms are identical in their provisions, except such items are are necessarily different, because the one is a re-sale form.

Q. Do you know of any competitor that use a different form of contract than yours?

A. I don't know. I have not made a study of what forms are used.

Q. Does your sales contract that you use to dealers contain a clause prohibiting diversion of shipments in transit?

A. Yes, it does.

Q. Do you know how that clause got into the contract?

A. I think that was in the original contract in the Code.

Q. You do not know how it got into the contract that got into the Code?

A. I do not.

27917 Q. Do you attend Institute meetings regularly?

A. I have attended a number of them.

27918 Q. I think on direct, Mr. McKee, you said that the Government did not ask for prices f.o.b. mill except in the instances that were called to your attention here, 1339 and two others; is that right?

A. Yes, that is my recollection.

Q. Haven't you received invitations from the Government in which they asked for an alternative bid, f.o.b mill or f.o.b. destination?

27919 A. Yes, we have.

Q. To that extent you want to change your testimony that the Federal Government has never asked for bids f.o.b. mill?

A. I believe I testified that they had asked for prices f.o.b. mill.

Is that correct?

Q. I think on direct you said they had not. I think on direct your testimony ran to the effect that nobody asks for prices f.o.b. mill.

Mr. Leisure: No.

A. No. No.

By Mr. Paulson:

Q. Well, who does ask for prices f.o.b. mill?

A. The Federal Government is the only one that I can recall.

Q. No State Government ever asked you for prices f.o.b. mill?

A. I don't believe so.

Q. Any counties, municipalities?

A. No.

Q. And no dealers?

A. We were asked for quotations f.o.b. mill back in the period in which we were trucking, but we have not had any requests for a long time back.

27922 Q. Yes.

How do you explain the fact, Mr. McKee, that there is very little trucking of cement in the cement industry?

A. Because, all I can state is of my own experience with it, and I presume that the experience of others was similar to it. I have stated on direct that we found it more expensive, we found it unsatisfactory because of argument, and difficulties, with our customers—

Q. And because—

A. —it was putting a manufacturing company into the retail business.

27926 Q. Mr. McKee, do you advertise on a quality basis?

A. Yes, sir.

Q. You advertise—you try to sell your cement on the basis of quality?

A. Yes, sir.

Q. Do you print advertisements?

A. Yes.

Q. Advertising the superiority of your cement?

A. That's right.

27930 Q. It would be quite impossible, would it not, for your salesmen to keep you fully informed of the destination prices at all the destination points in the sales territory in which you operate?

A. Well, they can give us information on enough points that we have a belief that there is a high degree of probability that the method we are using in calculating what is the lowest price is generally correct.

Q. Yes, but, I mean, you did not know, or if there was not in existence the present method that is in existence among your competitors with your staff of salesmen, you would not be able to keep posted as to destination prices in all that territory, could you?

A. We not only have salesmen but we have three or four hundred friendly dealers, and if the price structure were more complex, we will say, those dealers would more frequently call us and advise us of what information they had in order that they could quote their contractors just as they volunteer information when a price change takes place.

Q. Have you learned that you can rely upon the information submitted to you by dealers as to the prices prevailing and the prices quoted?

27931 A. We can rely on the majority of the dealers. We check,—but the majority of them will not attempt to lead us astray.

27936 You don't recall—you don't associate an advance in Cleveland base-point price with the year 1936?

A. No, I didn't say that. I said I couldn't tell you specifically. I think there was one at that time.

Q. Do you remember what part of the year that that rise occurred?

A. I think it was in the early part of the year.

Q. Do you remember where you first heard of that rise?

A. I think we heard it through one of our Cleveland dealers, probably Herbert Geist, who is the closest friend I have in Cleveland.

Q. Do you recall whether or not he sent—do you recall whether or not he said that announcements were in the field showing the rise?

A. I recall that on several occasions Herbert Geist called me and said that he had quotations, or new informa-

tion, or this, that, or the other. He was in the habit of doing it regularly. We, as I say, have been close friends for a number of years, and I remember that on a number of different occasions he did so.

Q. That was your first information—you had none from competitors?

A. None whatever.

27938 Q. But you say that you received no information—

A. I did not.

Q. Except from your dealers?

A. No.

Q. You had no knowledge of a rise, that a rise would occur?

A. No.

27939 *Redirect Examination by Mr. Leisure.*

Q. Mr. McKee, this morning Mr. Paulsor asked you some questions with regard to the general practice in the industry with respect to whether or not in the territory in which you do business ordinarily you found the prices to be quoted on a base plus freight from some basing point, and at the end of the question, as I recall it,—I have not got the minutes,—he said "in the freight rate book."

Do you have any knowledge of whether or not your competitors do or do not use the freight rate book?

A. I have no knowledge of that and I do not recall hearing the last part of that question. I was thinking about the way we made up our prices, and as being a ques-

27940 tion of the so-called base price plus the freight rate to destination, and the fact that we did use freight rate books ourselves; but I do not know how they were made up, I do not know how our competitors made them up.

Q. Now, you have also testified this afternoon with regard to a flat rate in Allegheny County, and as to certain sections where there is feathering back; do you recall those questions with regard to that matter?

A. Yes.

Q. And you were asked about the prices there. Why don't you sell your cement cheaper than you do, Mr. McKee?

A. Because we have lost money over the average of the last 10 years to a considerable amount, and we cannot afford to sell it cheaper.

Q. You were asked other questions, and I do not have the stenographic minutes, I only have my notes, but generally to the effect they were as to whether you quote the base price plus the freight when you are not familiar with the market price at destination. As to that I would like to ask you, do you have any assurance that your competitors will quote the base price plus freight when such cases arise other than your ordinary business observation?

A. None.

27942 Q. You just have said that you do not offer price concessions to get business. Will you tell us about your policy with respect to that, and the reason for it, Mr. McKee?

A. We have always operated on what we term a one-price policy, and that our prices are known, and, as I testified before, the same at any given destination. To give one dealer a concession would immediately cause a request from others; furthermore, with the lack of profits from business over the past 10 years we cannot afford to reduce our prices.

Trial Examiner Norwood: Do you think that reducing your price in any and all cases would reduce your profits?

The Witness: Yes, because if we reduced our price such a reduction would be met, as soon as known, and

27943 those things are known very promptly, and we would get no greater volume, and have our price at that destination, or in that area, reduced, and would suffer thereby, and our loss would be greater.

Trial Examiner Norwood: Do you think, though, that if you contracted for a large volume, at a small price reduction, it would not increase your profits?

The Witness: Well, we never look on any sale from just the standpoint of the one sale. We have to think of its effect on our other customers. We have to think of its relation to what we are going to do for many years to come, and we, therefore, have to treat a problem from the standpoint of the other factors that relate to it.

Trial Examiner Norwood: Well, in sales in your immediate neighborhood, where others would not have an equal advantage with you, would that same condition prevail, where, say, they could not afford to meet the price, or come lower?

The Witness: We have found, from observation, that prices have been met down to what is apparently close to the out-of-pocket cost of production, at least measured by our experience, and the small area to which we have an advantage in freight rate only has an advantage to the extent of a maximum of 4 cents a barrel.

Now, if we reduced our price to 4 cents per barrel
27944 above our out-of-pocket cost, which would theoretically be at the out-of-pocket cost of our nearest competitor, we could not expect to continue in business, because we would have all of our overhead and fixed expenses to carry. Therefore, to reduce—experience has shown that you cannot keep anyone out of a territory by reducing the price, unless it goes down to the out-of-pocket cost of the nearest mill, and if we would do that we couldn't continue in business because we would have the 4 cents' freight advantage that we have at our best possible destination, would be insufficient to carry overhead.

Trial Examiner Norwood: Well, now, suppose that you raised your local price.

The Witness: To give us an exclusive market?

Trial Examiner Norwood: Raised your local price in your exclusive field, where you have the advantage of your competitors as to cost of delivery, wouldn't that give you a little extra profit?

The Witness: A—there will be a meeting of the competitive price down to the out-of-pocket cost. Now, the difference between our—if our out-of-pocket cost is the same as our competitors, which is roughly the case, I presume, at our closest market, we only have a 4-cent advantage in freight.

By Mr. Leisure:

Q. Yes.

27945 A. And, hence, if all that we could gain would be 4 cents per barrel above the other man's out-of-pocket cost, and 4 cents per barrel would only be a fraction of the difference between out-of-pocket cost and total cost, because the items of overhead, financial taxes, and so forth, are so heavy in an industry of this type—therefore, there is no way in which we can keep competition out of our closest and most favorable market without putting ourselves out of business.

Trial Examiner Norwood: Well, do you go out into the other fellow's territory and sell at out-of-pocket cost?

The Witness: We sell in the other man's territory at figures below our total cost.

Trial Examiner Norwood: Yes.

The Witness: But in no case at figures below our out-of-pocket cost.

Trial Examiner Norwood: Well, why do you do that?

The Witness: We do that because if we have a certain volume of business, and we can increase that business, well, say, 20 percent, that extra 20 percent will tend to carry these fixed charges of administration, financial, and taxes, which represent the difference between out-of-pocket cost and total cost.

Trial Examiner Norwood: And that does not reduce your profit average?

The Witness: That will—that will reduce our 27946 losses because it will give us a greater volume on which to carry these items of fixed expense.

Trial Examiner Norwood: Well, do you have no points of advantage where the other fellow's out-of-pocket cost would give you a small profit?

The Witness: We do have a small area where the other man's out-of-pocket cost would give us 4 cents above our own out-of-pocket cost, but that would still be a very considerable loss under our total cost.

Trial Examiner Norwood: Wouldn't he get tired of that?

The Witness: Well, I don't know. Experience would seem to indicate that there have been certain sections of the country where prices were low for a considerable period, and the history of bankruptcies in the cement industry speaks for itself. There have probably been more bankruptcies in percentage in the cement industry than in any other single group except the coal industry.

27952 Brooklyn, N. Y.,
December 5, 1939.

27953 H. B. ROBESON, being called as a witness for the Respondents and being first duly sworn, testified as follows:

Direct Examination by Mr. Leisure.

I am the chief executive of the Nazareth Cement
27954 Company, being executive vice-president and general manager and also continuing to function as general sales manager. I have complete charge of the organization and I determine the marketing policies of the company.

The other officers are: M. J. Warner, president; John H. Goss, vice-president; H. M. Whiting, secretary and treasurer; C. F. Michaels, assistant secretary; S. J.
27955 Fehnel, assistant treasurer. Mr. Warner, the president, has been in ill health for quite some time. Mr. Goss, the other vice-president, is in business of his own in Waterbury; and, therefore, the interests of those two gentlemen are largely financial. Mr. Whiting, secretary and treasurer, performs his function, but he is not at Nazareth. He is located in Connecticut. The other two officers are located with me at Nazareth.

27956 I am a director of Nazareth, but I am not an officer or director of any other cement company. I have been with Nazareth since October, 1924, and have held the position of general manager since November, 1927. At that time I succeeded George F. Coffin. I originally started in the cement business in May, 1913 at the old Atlas Company. I stayed with them until December, 1922 and then I was out of the cement business for a year and 10 months. I came back in the cement business with Nazareth in October, 1924 as sales manager.

Nazareth was originally organized in 1898 and incorporated in the State of Pennsylvania. It started shipping in
1899. It went through one re-organization in 1906
27957 and again in 1918. The present corporation dates from 1918. Nazareth is not affiliated in any way with any other cement manufacturing company, except

that Mr. Brobston, president of Hercules, is also a director of Nazareth. Nazareth operates only one mill, located at Nazareth, Pa., in the Lehigh Valley; it has no warehouses, silos, or other distributing points. The present plant was started in 1898, and first shipped in 1899. The rock is located at the quarries, right near the mill. In
27958 recent years there have been changes in the specifications, or in the development of other types of cements than we might ordinarily make with our original composition, and to meet these specifications we have to bring in silica, sand and iron ore. The silica comes from a spot in Northampton, "the sand comes from over there", the iron comes in the form of iron pyrites.

Trial Examiner Norwood: Why are you going into that?

Mr. Leisure: It goes to these marketing problems, Your Honor, as to his location; as to whether he could be better located under those—whether he is located at the most advantageous place, regardless of any method of marketing.

Trial Examiner Norwood: You may ask him one question there as to why he is located where he is, and cover that whole thing; but I am not going to take a lot of details here with regard to that, when it is not an issue in the case.

Mr. Leisure: Why, I understood from that—

Trial Examiner Norwood: He may state that one effect which would flow from present methods of restraint of trade would be to enable mills to be located in uneconomic positions, uneconomic sections; or, in other words, at
27959 places where they would be at an economic disadvantage,—allege that is one effect which might flow from this, and then you are bringing out testimony to disprove, then, the alleged restraint of trade. I think it is very remote.

Mr. Leisure: Well, I will go on to something else.

Trial Examiner Norwood: Yes.

Mr. Leisure: It seems to me important.

Trial Examiner Norwood: We have reached the point here where we have to confine ourselves to the receipt of substantial evidence.

Mr. Leisure: It seems to me important. We have tried to take out all questions that we thought were not important.

Trial Examiner Norwood: I will rule it out and give you the benefit of the exception on that.

27964 Q. Do you sell those cements at the same price you sell your standard cement?

A. All the prices that are in the Portland cement class are sold at the same price we would sell our stand-
27965 ard Portland cement. The high early strength Portland cement which we have, of course, we sell for 50 cents a barrel more than our standard Portland cement.

Q. I am talking now about special cements.

A. That is correct, sir.

Q. The special cements, do they cost you any more to manufacture than the ordinary cement?

A. Yes, they do; yes, sir.

Q. Why do you sell them at the same price as ordinary cement?

A. In the first place, the federal specification, or published specifications, which the majority of manufacturers can manufacture them under,—some manufacturers meet these specifications automatically with their normal composition; their normal composition is practically identical with that specification.

Now, in connection with the New York State business, the mills on the Hudson River Valley, their composition is practically the same as that specification; that is, their normal specification.

Now, in a mill coming from the Lehigh Valley, such as ourselves, we have to meet these additions of silica and iron in order to meet those specifications. To us they will be an additional cost of purchasing those materials and the cost of adding them.

Q. Now, just one other question on this question
27966 of location: Have you made any survey as to the rock,—as to the quarry situation, the availability and supply?

A. Yes. About 1926. At that time we had the problem of modernizing the mill and before modernizing the mill we had a survey made by Professor Miller, who is an eminent geologist at the Lehigh University, and the survey at that time showed we had enough rock at the present rate of production for about a hundred years' operation; and based on that we made investments in the plant amounting to about $3,300,000 between 1926 and 1931.

Q. I do not recall whether you were asked when you appeared previously where the main office of the company is?

A. It is at Nazareth, Pa.

Q. Have you any other offices?

A. We have two district sales offices, one at New York and one in Philadelphia.

Q. Into what territory, Mr. Robeson, do you normally ship your cement?

A. Into the northeastern states principally, starting with Massachusetts and working on down, generally speaking, in Pennsylvania, about as far west as Altoona and Johnstown, and we just barely touch Washington.

Q. Well, now, what is your longest distance there so that we can discuss that later. You say the New England States.

A. Oh, I would say the longest distance we ship 27967 at the outside would not be over, say, 300 miles.

Q. And do you do any considerable business in New Hampshire and Vermont?

A. No, we just touch it with occasional orders.

Q. Calling your attention to Commission's Exhibit 1063-C, it appears from this exhibit, Mr. Robeson, that you received from the Government an invitation to bid on a W.P.A. project at Rolling Fork, Miss., and that you did not bid. Since you have been with your company have you ever shipped into Mississippi?

A. No, sir. That is far beyond anything we can reach and serve.

Q. Calling your attention to another exhibit, 1083, in this invitation it appears that you received from the Department of Agriculture an invitation to bid on the cement to be delivered to several points in Alabama on October 7, 1936, and that you did not bid. Have you ever shipped any cement into the State of Alabama?

A. Not in my time; no, sir.

Q. Calling your attention to another Commission's Exhibits 1084, and 1094, from these exhibits it appears that you received invitations to bid of small lots of cement to be supplied at different points in South Carolina, and that you failed to quote.

Have you ever shipped any cement in South Carolina?

A. Never in my time with the Nazareth Company; no, sir.

27968 Q. Where do you do most of your business, Mr. Robeson?

A. Oh, the principal part of our business is done in the metropolitan area of New York and the metropolitan area of Boston, and a tier of States in between. Of course, in Pennsylvania where our mill is located, working north from there into the southern tier of New York and the major portion of New York State—principally, of course, in the southern part.

Q. Do you have any one principal or chief market?

A. The most important market—to us, the two most important markets would be New York and Philadelphia.

Q. And they are about how far?

A. I would say the New York market, just about railroad mileage from our plant, about 90 miles.

Q. And Philadelphia?

A. The Philadelphia market, oh, the railroad mileage probably would be about 70 miles.

Q. Do you have salesmen in all the territory in which you do business?

A. Yes, sir; we do.

Q. Which you have described; and how many salesmen do you have?

A. We have 19 men in the field and two district managers.

Q. How does the present size of your sales force compare with the size of the force when you started?

27969 A. It is an increase from when I came with the company.

Q. And have you told us—I want to be sure it is on the record—have you told us the territory in which all of your salesmen cover, in the way of soliciting business?

A. I have never described it.

Q. I would like to have it, please.

A. Well, we have one salesman who—

Trial Examiner Norwood: Just give us a comprehensive statement of the territory that you cover, your sales territory, short and comprehensive.

27970 Mr. MacIntyre: We already have that, Your Honor please. The witness just gave that about three minutes ago.

Mr. Werle: He told us what areas he shipped into. That does not necessarily mean his salesmen cover all that area.

Trial Examiner Norwood: Do your salesmen cover the area?

The Witness: Sir?

Trial Examiner Norwood: Do your salesmen cover the area?

The Witness: Yes. We have salesmen in each locality.

Trial Examiner Norwood: That is it.

Q. Going to a new subject:

What is your productive capacity of the plant?

A. About 2 million barrels a year.

27972 Q. Could you tell us, Mr. Robeson, offhand, what percentage of capacity your mill ran in 1937?

A. I do not carry the exact figures in mind, Mr. Leisure, but I would say about 47 percent.

Q. Has your mill ever run at full capacity?

A. Yes, it has; yes, sir; not in recent years.

Q. Maybe we can save some time. When was it,

27973 if you know, Mr. Robeson?

A. I would say either about 1927 or 1928.

Q. Well, now, how does your sales, your present sales volume, compare with your sales volume at that time?

A. Just about half.

Q. And has that situation had any effect on your selling costs?

A. Oh, yes, it has increased considerably from a unit standpoint.

Q. Who in your company, Mr. Robeson, determines the question of what area into which you will sell your cement?

A. I do, sir.

Q. Well, now, how do you go about that, Mr. Robeson? How do you determine what area you will solicit your business? Can you tell us whether you have any policy to stay or not to stay within any definite limits?

A. Well, there are a number of factors that enter into it. First, of course, would be the net that we receive in the territory, the amount of business available in the territory, and the likelihood of our being able to develop a portion of that business, and our ability to stay with the market from the standpoint of service.

Q. Well, do you give any consideration as to the return to the mill; is that any determining factor in your decision?

A. Yes, that would be an important factor.

27974 Q. It is merely one of the factors?

A. It is just one of the factors; yes, sir.

Q. What else besides your return at the mill?

A. Well, the amount of the business that would be available in that locality, and the likelihood of our succeeding to secure a part of that business; and the question of service would enter into the question; and, of course, then there are occasions when we have a good customer in our territory, in the heart of our territory, who sometime goes beyond the territory, we ordinarily would ship, and we would follow him through so as to maintain our contact with him and not let a competitor get a contract with him.

Q. And when you use—when you say "return at the mill," you mean from that your mill net?

A. The mill net; yes, sir.

Q. And to be sure I understand what you mean when you use that word, what do you mean when you use the word "mill net"?

A. "Mill net" is the amount we receive after we have taken away destination price and we have stripped the price from it, and cost of the package, and cost of the discount brings us back the mill net stripped, we call it.

Trial Examiner Norwood: Cost of the packaging, did you say?

The Witness: No, the cost of the package, the package itself. See, if the shipments call for bags—

27975 Trial Examiner Norwood: Does it include return sacks?

The Witness: Yes.

Trial Examiner Norwood: After taking the sack returns—

The Witness: Beg pardon?

Trial Examiner Norwood: After taking the sack returns?

The Witness: Yes.

Trial Examiner Norwood: As to deducting the sack returns.

The Witness: Well, you have two movements there from the accounting standpoint, one you bill the customer for the sacks when you send them out. Now, we know under the terms of our sale we are going to take those sacks back; therefore, we don't consider those sacks a part of our net.

Trial Examiner Norwood: Mill net would be after you have taken off the—

The Witness: The mill net would be taking your destination price, stripping your freight, and stripping the cost of the package.

Trial Examiner Norwood: Yes.

The Witness: That would bring you back to mill net.

27976 Trial Examiner Norwood: Yes.

By Mr. Leisure:

Q. And in your daily work, do you consider the mill net your price?

A. Not as such; no, sir.

Trial Examiner Norwood: Well, when you speak of a certain mill having a base price, say, of $1.50, or having a base figure of $1.50, in estimating the price, what does that include?

The Witness: Well—

Trial Examiner Norwood: That $1.50.

The Witness: —1.50—in other words, theoretically, you don't have such a thing as a base. You have got a distributing point, and you have a figuring price you work up from. First, you work back to it, and then you work from there, and that, generally speaking, when a cement man says, "$1.50," he generally means $1.50 stripped.

Trial Examiner Norwood: Yes.

The Witness: Now, that would mean exclusive of package, and exclusive of cash discount, when he says "stripped."

Trial Examiner Norwood: You mean that $1.50—that means that it is $1.50 after deducting the freight only?

The Witness: No, the freight and the package.

27977 Trial Examiner Norwood: And the package?

The Witness: Now, there are some—I have seen it in going through the record here—some people talk about base and include package; other people include a cash discount. I myself, when I talk about a net, I am talking about it stripped; in other words, that is what we have to figure—that is, the money comes in on the base, and we figure what goes out against that.

Trial Examiner Norwood: That has nothing to do with the 15-day discount?

The Witness: Oh, no, sir. The cash discount would be off that.

Trial Examiner Norwood: I see.

Go ahead.

By Mr. Leisure:

Q. You mentioned this problem of following one customer into another territory. Is that something unusual, or is it something you have to deal with with your contractors?

A. No, it comes up frequently, every now and then.

Q. Just one more question on that mill net that I neglected to ask you: Is that the same as your net profit?

A. Oh, no, no, sir. Net profit, if any, would be the difference between the net that you receive, and your total cost of doing business.

27978 Q. In your overhead, do you include loss of sacks as part of your overhead cost?

A. Well, loss of sacks would be operating cost, rather than what you call pure overhead.

By Mr. Leisure:

Q. And if operating cost is part of your overhead, then—

A. It is part of the basic cost, as you come through. Of course, in addition to the sacks loss we also have freight on the return of sacks, which we must pay.

Q. Mr. Robeson, does your company have any minimum mill net below which you will not go?

27979 A. No, sir; no fixed minimum.

Q. Do you ever have occasion to go into territory where the result shows an average net below your average net?

A. Yes, we do, on occasion. That is one of the instances I have in mind, before you, where we might follow a special contract with contractors, a customer, for a long time,—it is entirely a matter of judgment, resting with myself. The fact is that I do take into consideration the relationship of the customer, the tonnage involved, and, of course, the net that we would receive.

Q. Are there any territories in which you compete at one time at which you do not compete at another?

A. Yes.

Q. Where?

A. Well, of course, going all the way back to the early days with the Nazareth Cement Company, we operated considerably beyond the territory we operate now, but in my time with the company, we have had to pull back
for markets as new mills were opened, and they
27980 were in better position to serve those localities, why, eventually we were driven back. When the mills are first opened we can stay in, but the fact that they are able to render overnight service eventually will get the customer away from us.

Q. You mentioned Pennsylvania. Do you compete in any of the markets of Western Pennsylvania?

A. Oh, we operate in what we call western central Pennsylvania; that is, the western fringe of the central part of Pennsylvania. For commercial business we don't go full west; in other words, we don't go out to the Ohio State line.

The witness identified Resp. Ex. 1421 as an analysis of shipments made by Nazareth during the year 1937, showing the number of miles from its plant that deliveries were made. It was prepared at his request and under his
supervision by Nazareth's office staff and he vouches
27984 for its accuracy and correctness.

Q. While they are looking at that, Mr. Robeson, let me ask you—can you tell us whether or not 1937 was a typical year in your business?

A. Yes, it is a typical year.

Examination on Voir Dire by Mr. MacIntyre.

27985 Q. Now, from what records was this particular tabulation made, Mr. Robeson?

A. From our total shipping records.

Q. Well, what records are those? In what form are those records?

A. Well, they are in this form, they are in the form, first, of our shipments to individual customers. That is part of our detailed statistical system,—that we took the customers in their locations within the different zones, and then we applied and totaled the tonnage of all of those people within the zones, which is part of our basic record that we—

Q. This is not merely a matter of placing a tabulation

on that, then—it is a calculation from those records, isn't it?

27986 A. Yes, it would be a calculation from those records, but those records are—.

Q. It is not a tabulation of the records, but it is a calculation from them, is it not?

A. That's correct.

Mr. MacIntyre: Your Honor please, we object, and object just as strongly as we know how, to such a paper as this, in that it can be used in a manner that would mislead one as to what the real facts are.

Furthermore, it does not really show in sufficient manner what the facts are, and, furthermore, we do not have a basis for it for use in determining the accuracy of it, and for the use in the cross-examination of the witness on it.

For that reason, and for all of the other reasons of it being irrelevant and immaterial in the manner in which it is set up, we object to it.

27987 Trial Examiner Norwood: The supporting data is not in evidence.

Mr. Leisure: Oh, no, no.

By Mr. MacIntyre:

Q. Where is it, Mr. Robeson?

A. At Nazareth, Pa.

Q. In the offices of your company?

A. In the offices of the Nazareth Portland Cement Company.

27988 Trial Examiner Norwood: Cannot this witness swear to the facts, as to the shipments he has made here, and introduce for the Commission's convenience, his analysis of those facts?

Mr. Leisure: Well, I would think so. It is much shorter than forcing us to bring in all of these invoices for

27989 the year 1937. If Mr. MacIntyre, when it comes time to cross-examine, feels that there is any error in that tabulation, we can bring in the invoices here for the purposes of his cross-examination. It is a time saving matter, it seems to me.

Trial Examiner Norwood: I think that this discussion develops this, the fact that this is based on some data that is not available to the Commission's Counsel; also, the

fact that this calculation was not made by the witness here.

Mr. Leisure: Well, are we going to have a different rule now than the one we followed all through since the case started? When we put in—we have had many
27990 tabulations on bids that certainly were not in the courtroom; and this material is available, if the Commissior disputes it—in fact, if they dispute it, we will bring them here. If they dispute the correctness of it,—if the objection goes to the correctness of that exhibit the head of this company having said it is correct, we will bring the invoices here,—if the objection goes to that.

If it is to something else, then I think it ought to be admitted.

Trial Examiner Norwood: I think, applying the same rules that we have endeavored to apply before, that we shall have to sustain the objection to that paper at this time.

Now, if you want to bring in the man who made it, and to make the supporting data available to the Counsel for the Commission, why, possibly it may come in a little later, but in its present status I shall sustain the objection to it.

27991 *Direct Examination by Mr. Leisure (Continued).*

By Mr. Leisure:

Q. Dropping this exhibit for the moment, can you tell us what your total shipments were for the year 1937, Mr. Robeson?

Mr. Paulson: That is already in evidence, if Your Honor please. We object to it.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: The objection is overruled.

A. I do not remember the exact figure, Mr. Leisure. I would say about 811,000 barrels.

By Mr. Leisure:

Q. And what proportion of those shipments, would you know, without any reference to this exhibit, was shipped into the area within, say a hundred miles of your mill?

27993 A. I would say about 50 per cent.

By Mr. Leisure:

Q. This Exhibit 1421, for identification, which you have said was prepared under your direction and supervision from the records of the company, can you in any way, Mr. Robeson, look at that and refresh your recollection as to your last answer?

Q. First, let me ask you, can you refresh your recollection from looking at the exhibit?

A. Yes, I can, sir.

Trial Examiner Norwood: Now, this is not a paper that he has made. He is refreshing his recollection from something that has been prepared for him, and which he
27994 had no previous recollection about that except these general things which he has testified to.

I do not see how he can use that. This paper has been ruled out.

Mr. Leisure: Well, I will go on.

Trial Examiner Norwood: And under the guise of refreshing his recollection, I do not see that you can put it in through his mouth.

Q. Taking up another subject: How do your shipments of cement compare from month to month, Mr. Robeson?

A. Well, they vary, Mr. Leisure, from the early part of the year, January and February, the winter months, they vary, of course, depending upon the weather we have in those two months, and usually run about 7 percent for those two months combined. Then in March they would ordinarily pick up to about 4 to 5 percent. April they would get up around to, say, 7 per cent. Then about May you begin to get into your full shipping months; on an average they will run about 10 percent for May, June, July, August, September, and October—October being the last big shipping month. Then November would taper off again, oh, to possibly 7 per cent, and December taper off to, say, about 4 to 5 percent.

27996 Trial Examiner Norwood: You do not want to show anything different from what is already in?

Mr. Leisure: I was not asking him anything in regard to statistics. I just wanted to get an idea from him what his experience was as to his seasonal demand, preliminary to questions I was going to ask.

Trial Examiner Norwood: I think he may tell us.

Read the question.

(Question read.)

Trial Examiner Norwood: I think he may tell us what that is, generally.

Read the answer.

(Answer read.)

Trial Examiner Norwood: I shall deny the motion.

By Mr. Leisure:

Q. Do building programs have any effect on this
27997 seasonal demand?

A. Yes, they do, and, of course, primarily, one of the big factors is the fact that your road work is done during the period when the weather is the most suitable, which would start about May and run to about October.

Q. Now, does this fluctuation which you have told us about, and seasonal and building programs, does that present any problem to you as a manufacturer?

A. Yes, it does, from this standpoint, that in order to be able to take care of the peak demand in the heavy shipping months you have to provide storage facilities and build up stocks in anticipation of that demand.

Q. And what, if any, effect does that have upon your costs?

A. Well, it does have this effect, that you have to provide large inventories in anticipation of business and, of course, provide storage capacity away beyond what you would ordinarily have if your business ran at an even keel. Nazareth has 8 kilns but is only operating 5 at the present time. We have not operated all 8 kilns since the
27998 depression began. We operate the 5 kilns as long as we have a production schedule equal to what we see in the way of shipments available. Last year I would say we probably operated the 5 kilns for about 10 months, with a 2 month shutdown. When a cement plant is operating, its kilns are on 24 hours a day and they stay on continuously. The most economical operation for Nazareth would be to operate the 8 kilns full blast and then shut down probably for longer periods, but we are operating on 5 kilns with the idea of balancing our work with our labor more than anything else.

The witness identified Resp. Ex. 1422 as a document showing the percentage of yearly shipments by
27999 month. He took the years 1936 and 1937 and used

them as typical years. It represents the true facts as far as his company is concerned.

28000 (RESP. EX. 1422 was offered and received in evidence.)

By Mr. Leisure:

Q. Mr. Robeson, as head of your company, have you attempted to do anything to level out these fluctuations in so far as they affect your company?

A. Well, we do to this extent, Mr. Leisure, that we try to persuade as many people to do concrete work during the winter as we possibly can.

28001 Q. How do you sell your cement today,—do you sell it at delivered prices?

A. We do; yes, sir.

Q. And is that or is it not your policy?

A. It has been our policy; yes, sir; ever since I have been with the company, and, as far as I know, prior to my coming th the company.

Q. Why do you continue to sell?

A. Because that is the point at which we have our competition, the point of use.

Q. Do you have any market at your mill?

28002 A. No, sir. There is no market at our mill. We are in a little community where, if we sold all the cement in that community, we could not keep our mill going for probably more than about two days out of a year.

Trial Examiner Norwood: Do people ever come to your mill with trucks and ask for mill delivery at the mill?

The Witness: Not in recent years, Your Honor.

Trial Examiner Norwood: At one time they did?

The Witness: In the early days farmers used to come in, people around there, but they generally wanted a few odd bags, things of that sort, which really upset your mill operation. It was not sizable business or attractive business.

Q. Do you, in selling at delivered prices, consider the protection of your dealer in any way?

28003 A. Well, you do to this extent: In a market where we would have a particular dealer who had been associated with our brand for a long time, why, naturally, we would have to protect that market, and prevent, if we could, people coming from outside with our brand in that market, if we wanted to hold the good will of that particular dealer.

Q. Do you sell any cement to railroads?
A. Yes, we do; yes, sir; a little bit.
Q. On what basis do you sell to railroads?
A. We sell that f.o.b. their rails; f.o.b. their rails at our mill, if they are a local line, such as we are local to, and f.o.b. when it is a junction point—if it is a railroad that we are not local to.
Q. And as far as railroads that have no siding, how do you—at your plant—how do you sell?
A. We would sell that at the nearest junction point, and we would sell it f.o.b. their tracks at the nearest junction point.
Q. And do you or do you not absorb freight at that junction?
A. Yes, we would have to absorb freight in order to meet prices they have available from manufacturers on that line.
Q. Are these sales to railroads any exception to your policy of selling at delivered prices?
A. Yes, they are the exception in this sense, that we quote them f.o.b. mill, but we do feel, however, that
28004 is the delivery point; in other words, that is the only point we know for them to take delivery. The delivery point is technically right there at the mill, or at the junction point.
Q. How much of your business do you sell to railroads?
A. Oh, I would say in no year would it run over, say, one or two percent.
Q. Now, I think you told us that you had been manager, sales manager, since approximately 1924?
A. Yes, sir.
Q. Who determines the price policy of your company?
A. The price policy of our company, from the basic standpoint of policy, I would determine it. The price we make is determined by the competition we have to meet.
Q. Well, in a word, what is the price policy?
A. We have a one-price policy.
Q. Do you or do you not make it a practice to follow changes in prices in marketing prices? What is your experience on that?
A. Well, our experience has been that we must always keep ourselves—meet the competition of the lowest price that we find at any destination, and the same way with any marketing practice. If a competitor makes a change and offers a dealer, or any customer, for that matter, a propo-

sition which the dealer or customer feels is more attractive than ours, it immediately forces us to meet that
28005 situation or forego the business.

Q. Do you have any single competitor whom you have come to regard during the course of years in your experience as a price leader?

A. No, sir.

Q. Has The Cement Institute, in your daily affairs, ever attempted, to your knowledge, to influence your price policy in any way whatsoever?

A. No, sir.

Q. Does the same answer, or does it not, apply to your competitors?

A. No, sir. In other words, our competitors would have nothing to do with our price policy, except as such prices they would make in the field we would have to meet.

Q. How do you determine, Mr. Robeson, the price at which you will sell cement at any particular destination?

A. Well, in a sense, you do not determine it. It is determined for you by the competition that you find at that destination. In other words, it is then up to me, as a matter of policy, to advise my staff whether or not we will meet those prices.

Q. Do you meet all those prices?

A. We meet any prices that we know are actual prices. In other words, particularly published prices as we can find them in the field.

28006 Q. Well, when you say that you find in the field, what prices do you meet, Mr. Robeson?

A. We meet the destination price; we meet the lowest price that we find in that field.

Q. Well, how do you find out what the lowest price is?

A. Well, we have our sales force; we have a sales force of 19 men in the field, and two district managers, which gives a total of 21 men who are in constant contact with the field. Those men call on those customers daily, and, of course, their instructions are that if they find any prices more than our prices to immediately notify us through our district sales managers.

In addition to that, of course, we have dealers who if they do get a change of price will immediately call it to our attention.

Q. How long has that condition obtained?

A. That condition held since I have been in the cement business, even before I came with Nazareth.

Q. Now, when you get this information do you rely on information furnished by your customers?

A. Not in any one single instance. In other words, the minute we have information of that kind, why, we immediately check at a number of different spots, so we get some idea what the trend was. If it is a decline, of course we meet it automatically. We advise our sales force to
28007 advise our customers we are meeting that, and we will make out quotations the same day.

Q. Is the same true with regard to advance,—do you rely on that?

A. Well, with regard to an advance it is checked the same way; we have the information and we determine. I say "we," I mean at Nazareth, largely myself; we would determine whether or not we want to go along with that advance.

Q. You said "the customers." I am not sure what you covered, or who advised you. Does that include your dealers?

A. It will include dealers and contractors.

Trial Examiner Norwood: Now, when you determine a price at one or two destinations, you figure back to some basing point to determine prices at destinations in that neighborhood, do you not?

The Witness: Well, Your Honor, if you have a friend —in other words, I have been out there in the field myself, and, as a field salesman, and I know my reactions to it, and I have been in the past,—and as soon as a dealer told me that he had a new quotation automatically I would immediately check a number of given points in my territory so I was prepared when I wanted to report to my district manager.

Trial Examiner Norwood: Figured back by deducting freight, and that shows you what the probable price
28008 is at other destinations not bases; is that the fact?

The Witness: If it figured back to a constant—

Trial Examiner Norwood: Yes.

The Witness: —at some one point.

Trial Examiner Norwood: Yes, that is right.

The Witness: That would be an indication. It would not necessarily follow that it would be absolutely true, but it would be an indication, and then you would have to feel that section out to see whether or not your analysis of it was correct or not.

Trial Examiner Norwood: All right.

By Mr. Leisure:

Q. Now, without going any further into any detail on this, can you tell us, in your 25 years of experience, of any change that was not reported to you immediately? In other words, is that or is that not the practice?

A. Oh, a change in the cement business is known the minute it is made; in other words we would have the information probably within—about as soon as anybody opened their mail.

28009 The Witness identified Resp. Exs. 1423-A and B and 1431 A and B as actual quotations picked up in the field by Nazareth and sent in to him as he has described.

28012 Trial Examiner Norwood: The exhibits may be received as marked.

The objection is overruled.

(RESP. EXS. 1423-A, 1423-B, 1424-A, 1424-B, 1425-A, 1425-B, 1426-A, 1426-B, 1427-A, 1427-B, 1428-A, 1428-B, 1429-A, 1429-B, 1431-A, and 1431-B were offered and received in evidence.)

By Mr. Leisure:

Q. Taking up the subject of basing points, which has been discussed here on the record: There is evidence that some of the companies do check quotations which their salesmen gather in the field, that they do make that
28013 check in order to determine how the issuing company figured its price.

Do you follow any such practice, Mr. Robeson?

A. Yes; in other words, that's experience—

Q. Well, what do you do? I am just trying to save time. Will you tell us what you do, please?

A. What we do, when we have these notifications of price from our field force, we check a sufficient number of points to give us some information so that we can figure a trend, then we check those prices back to see whether they work up to some figuring point. If we find they work back to a constant, then we figure that competition used that figuring point, and used that price as a figuring point; used that as a start.

Q. Well, to what extent, if any, do you use basing points in the computation of your prices, Mr. Robeson?

A. Only from the standpoint of a figuring point, your competition starts out in the field, and it works back to the

figuring point, so there is nothing more than a quick calculation.

Q. Well, how do you know how they arrive at the prices?

A. Well, you don't know, except that you find your destination prices, and if you work them back to a
28014 constant, and then work back to the constant figure, then your experience comes to your rescue, then, and you figure that they use that as a figuring point and work their prices from there.

Q. Now, you have told us your practice in picking up these prices in the field. When you do pick them up are you concerned alone with what base mills are quoting?

A. No, we are only interested finally in what the price is at destination. That is what we have to meet, if we want to partake of the business.

Q. As to basing points, how do you determine, Mr. Robeson, whether a mill is a base mill or a non-base mill?

A. Only from the evidence that we find in the field. If the quotations seem to work back to some one figuring point, then we feel that the competition that initiated that price change had used that point as a figuring point. It might be one that we had previously knowledge of, and it might be a new one.

Q. Do you compile any list of these figuring points?

A. Yes, in time of a price change, you would, as a matter of detail operation, you would compile the data that you find in the field, and you would have that available in your office.

Q. Are your salesmen interested in that? Do you
28015 furnish it to them?

A. No, sir; we never do; no, sir.

Q. What about your mill? Do you have a base price at your plant?

A. No, sir; we don't, sir; no, sir.

Q. Would the assumption of,—and making prices, or price leadership,—would that make you a base mill?

A. Well, if we elected to do so, it would. In other words, if we elected to use our mill as a figuring point, and issue quotations on that basis, why, undoubtedly, it would make our mill a figuring point, at least.

Q. Is there anything to prevent your company establishing such a method of marketing, using your mill as a base, if you felt that it was to the best interest of your company to—

A. None whatever.

Q. —to market it in that way?

A. Nothing at all would prevent us from doing it.

Q. Why haven't you done it, then, Mr. Robeson?

A. Well, our people—even previous to my coming with the company—never elected to do so. We have been what you might call a market follower. We have never initiated a price change, in my stay with the company.

Q. How far is your mill—or, rather, how far is Nazareth from Northampton?

A. Oh, I would say about 14 miles.

28016 Q. Are there any towns in between?

A. Yes, in between Nazareth there would be several small towns, Bath and—

Q. Any markets there?

A. No markets there; no, sir.

Q. Are there any cement plants situated between Nazareth and Northampton?

A. Yes, I would say in between Nazareth and Northampton, offhand, probably seven or eight plants.

Q. What are they?

A. There was the Lone Star plant just outside of Nazareth; then there is the Dexter plant, the old Dexter plant of the Penn-Dixie plant; then a Penn-Allen plant; then the Pennsylvania plant; then the Keystone plant at Bath; the National plant at Brodhead, and then over into Northampton there would be the Atlas plant. There is a nest of plants surrounding, right around Northampton.

28017 Q. Can you tell us, Mr. Robeson, what your an-
28018 nual shipments amount to into Nazareth and Easton, approximately?

A. Oh, I would say, offhand, in Nazareth, not over 5,000 barrels a year; and in Easton, not over, probably, say, 10,000 barrels every year. It would vary from year to year, according to the building operation going on.

Q. Is there any way in which you can determine in advance what the base is going to be at any particular time?

A. No, sir.

Q. Or as to what mills may determine not to be base mills any longer? I mean, any advance information that you have as to what mills are to be base mills—

A. No.

Q. —and vice versa?

A. No, it would all be information you would have to develop in the field as a market move was made.

Q. As to the different territories, are any particular territories always governed by the same base mill?

A. Well, in other words, I would say a territory that was immediately adjacent to an area like the Lehigh Valley, where the Lehigh Valley would have the most favorable rates freight-wise, that those particular territories always have been Lehigh Valley, and always stay Lehigh Valley, but, as you begin to get away you would have a probable swing, over a period of time, where a territory might be based on one figuring point at one time, and at some time later on it might swing back to another
28019 figuring point.

Q. Does that also apply to the Lehigh Valley?

A. Well, the Lehigh Valley—in other words, the Lehigh Valley, the base has changed innumerable times, in my experience in the Lehigh Valley.

Q. Now, as to your method of quoting prices, Mr. Robeson,—can you tell us whether or not your company broadcasts quotations to your trade?

A. Yes, we do; yes, sir.

Q. Under what circumstances?

A. Well, we broadcast them, of course, at the time of a market change, and we also broadcast them every once in a while, and we take the opportunity of putting our name before all of our customers, actually and potentially. We have no stated period for doing it.

Trial Examiner Norwood: How do you do that?

The Witness: Just by direct mail, Judge.

Trial Examiner Norwood: Yes.

The Witness: We have a mailing list on which we carry all of our—

Trial Examiner Norwood: Have you a regular printed form?—

The Witness: Yes.

Trial Examiner Norwood: —for doing that?

The Witness: Yes.

28020 By Mr. Leisure:

Q. What does that printed form show,—what your quotations—

A. The printed form shows our price at that destination of the man we are quoting.

Trial Examiner Norwood: It shows the terms on the back of it?

The Witness: Oh, yes, it shows the terms and—.

By Mr. Leisure:

Q. And the effective date?

A. And the effective date.

Q. And the price, I suppose, in the various packages?

A. Yes, it does; yes, sir; it shows paper, cloth, and bulk.

Q. At what points do these quotations cover?

A. Having—meaning the location of the territory? All of the territory that we cover; all of the States in which we solicit business.

Q. Do you keep any copies of the quotations that you send out?

A. We do under our system; yes, sir.

Q. What do you do? What is your practice?

A. Well, what we do with our—what we call our trade quotations—we make them up in quadruplicate. We send the original to the customer, and we send one copy to the district office governing that territory, and then we keep two copies in our loose-leaf books at Nazareth.

28021 Q. What, if any, use does your district office make of these?

A. It is a handy reference to quoting prices; customers call them on the telephone, or having occasion to write letters.

Q. Does your company make any other price list, or price books?

A. No, sir; we do not.

28022 Q. The record here shows, Mr. Robeson, in most cases dealers handle many different brands of cement. Is that your experience?

A. Yes, sir; anywhere from two—oh, two to fifteen different brands, depending upon the size of the market.

Q. And are your customers, or are they not, familiar with what the market price of cement is, ordinarily?

A. Yes, sir. They are usually fully informed.

Q. Before the recess we were discussing these periodical price quotations, which you sent out giving them your prices, giving the customers your prices. Do you have any occasion to discuss price with your customers, in addition to that?

A. No, generally speaking, your customer is familiar with the market, and most of our business is done with repeat customers that we are selling week in and week out.

28023 The major portion of the business is done by telephone, usually, with our district offices, or with the salesman when he calls.

28024 Q. Now, specifically what I had reference to, Mr. Robeson, is, you told us this morning about your method in meeting the lowest price at destination, and how you found what that lowest price was, and so forth.

Do you recall that?

A. I do; yes, sir.

28025 Q. Now, the point of my question now is, whether or not there are any destinations where you do not have such information, and, if so, what you do in that situation?

Do you understand my question?

A. Well, you mean a point where we might not have on our regular quoted list, some isolated point where some road job is going to come up, something of that sort, where we might not be regularly soliciting,—generally selling a town of that sort surrounded by larger markets in which we know about what the price is in that locality, and if they are on the same freight rate as the surrounding towns it is reasonable to suppose that that would be about the lowest price to that point, and we would quote and follow the market on that basis. It is possible, of course, where you have already previously found the prices in the field working back to a constant at some figuring point again, you could anticipate a price on that basis.

Q. Well, when you are doing that, do you have any advance knowledge as to whether or not that price, the price which you quote on that basis, will or will not be the lowest price quoted?

A. No, sir. All you do, make your quotation and follow your market.

28026 Q. Now taking up the freight rate books, the Nazareth Company, I believe the record shows, Mr. Robeson, had freight rate books prior to the advent of The Cement Institute?

A. That is correct; yes, sir.

Q. As to those books—I mean, the Nazareth Company books, in 1924, as I think the record shows—you were using such compilatic-?

A. They were books of the Nazareth Traffic Bureau.

Q. Yes. As to the Nazareth Traffic Bureau books, what was the nature of the information given in those freight rate books?

A. Well, just about the same information as you have

in the present freight rate books except in the present freight rate books you unquestionably have more head line points than we had in those other books.

28027 The Witness: Yes, sir.

I believe I previously testified in Washington that the books, to my recollection, carried the Lehigh Valley, Universal, and Hudson, and possibly Alsen.

By Mr. Leisure:

Q. And did you also tell us whether or not changes were made from time to time as to number of producing points?

A. Yes. In other words, there have been a number of changes made as we went along, so that the present freight rate contains a great many more headline points than the former book.

Q. Did you continue to use that service right up to the time that you subscribed to the Institute service?

A. Well, we—my recollection is that out of the Nazareth Traffic Bureau then we subscribed to Young's Service—I have forgotten the name of it now—but it was National something or other—and then we went back to Cement Institute books—present-day books.

Q. This new service that you have just mentioned, was that service organized by the cement manufacturers?

A. No, it was a man by the name of Young

28028 who organized the service, and attempted to sell it to them,—we, as manufacturers.

Q. I think the record shows that the name of that was also referred to as National Freight Service, or Freight Bureau Service, Mr. Robeson.

Did you find that of any benefit to you, or satisfactory service?

A. Well, if it were maintained, it would have been a satisfactory service; it would have saved us maintaining our own traffic department, and making these compilations from tariffs; but we did find that Mr. Young did not do all the things that he said he would do,—the service was not what we would call adequate.

Q. And in years—you used that up until what year, if you know?

A. I don't recall offhand, Mr. Leisure.

Q. But what I wanted to get at, after you used that service, you did what?

A. After—

Q. After you discontinued it.

A. After we discontinued that service, then we took service from the Traffic Bureau of The Cement Institute.

Q. And down to the present time, you still take that service?

28029 A. We still use the same service; yes, sir.

Q. Without asking a lot of questions on it, Mr. Robeson, the record, to summarize it, I think, shows that the principal difference between those services is that the cost is now spread between a greater number of contributors; is that your experience?

A. Yes.

28031 Q. Referring to Commission's Exhibits 1110-X to Y, which is a Cement Institute Freight Rate-Book to be used in Districts 1 and 2 (indicating).

Can you tell us, Mr. Robeson, how the information contained in the freight rate book furnished by The Cement Institute compares with the information contained in the books furnished by the Nazareth Traffic Bureau?

28032 Mr. Paulson: Objected to, if Your Honor please, —both books are in the record.

Trial Examiner Norwood: I think so; I think so.

The objection is sustained.

By Mr. Leisure:

Q. Well, let me ask you, then, as to how they compared as to your use of them, then, Mr. Robeson (handing exhibit to witness)?

We will just make it short. Let me ask you a leading question: Are they any different?

A. I wouldn't say they were any different.

Q. Very good. Let us not spend time on it.

I would like to ask you one further question about The Cement Institute book, and that is, as to whether your company has any voice in determining the headline points that are listed?

A. I would say that they would have if we wanted it, yes.

Q. Have you ever requested that any additional points be listed?

A. No, we have not, sir, for the simple reason that the freight rates coming out of the Lehigh Valley are what we would call blanket rates, after you get on the scale, so there would be no particular advantage, and this book

shows the Lehigh Valley District which would blanket our mill.

Q. One further question about the freight rate books. What is your experience in quoting,—could you
28033 quote and can you quote the same without the Cement Institute freight book—

A. Yes.

Q. —as you do now?

A. Yes, the Institute freight rate book only reflects what is in the tariff.

Q. Now, going back—

Trial Examiner Norwood: You mean that there are no errors in the book?

The Witness: Judge, I never found one in the books that I have handled in my time.

Trial Examiner Norwood: And you figure your freight payments on this (referring to exhibit)?

The Witness: We do. I don't know whether you recall it or not, but I testified in Washington that we definitely use the book for our billing.

Q. Going back to 1924, and coming on down to date, as far as your sales department is concerned, can
28034 you tell us whether there is any difference between the method of quoting prices used by your company today and the method used back in—

A. No basic difference from the time I came in the business.

Q. Are some kind of compilation of freight rates—can you tell us whether or not they are necessary to your company?

A. Well, they are handy and convenient; yes, sir.

Q. Well, aside from the convenience in any specific form, why do you have to have them at all?

A. Well, we would either have to provide a traffic department for developing information from the tariffs, or use this handy compilation.

Q. I see. Why do you have to have it for the tariffs, that is what I am getting at? I am not asking you now for any comparison.

A. Well—

Q. Why do you have to have it?

A. There would be two reasons: In the first place, if you found your quotations at destination, you would have to know what your freight rate was from your mill to know

what that particular sale would net you at the mill. Then, from the standpoint of billing, why, it is necessary to have the information to make out your bill-of-lading and make out your invoices.

Q. Now, that being so, could you or could you not meet your competitors' destination prices without
28035 the freight rate books of The Cement Institute?

A. You could meet your competitors' destination price without any question, as long as you were satisfied the customer had the price, and you elected to take business, but one of the steps you would use in determining that would be what would the business net you.

Q. Do you give your salesmen any specific instructions with reference to these books, freight rate books?

A. No, sir; we don't.

Some of the salesmen carry the books and some of them do not. All the information with regard to price is developed by ourselves at Nazareth after we get the information from the district office. The man in the field—the man in the field would not have any authority whatsoever.

Q. What use do they make of them, the ones that do carry them?

A. Well, generally speaking, the fellows that do carry them are the men that might on occasion work with a road contractor who might be figuring a job at a certain point out of that particular salesman's territory,—that salesman would tell him about what he thought the price was; and he would advise the district office this man was figuring that job, and the district office would issue a definite and firm quotation.

Q. Also that, does your salesman ordinarily discuss price with the customer?

28036 A. Well, a road contractor, if he is figuring a road job, he has got to find out what his cost of materials on a number of things that go into his job are, cement only being one of them.

Q. Well, I would like to get something on the record as to exactly what your experience is in an actual sale; I mean, take where a car is asked for by a dealer, let's say, I want to find out whether or not the salesman takes out his freight rate book and calculates the price or just what happens?

A. No. First, our business is largely done with customers who are repeat customers, many of them buying as

frequently as two cars a week, others buying say once a week or a couple of times a month, generally speaking, and they say to the salesman—or, for that matter, if they phone to the district office, "Ship me a car," specifying the size of the car they want and what cement they may want in the car, which may contain a certain amount of paper, a certain amount of cloth, light or dark cement, or, as the case may be, but you do not have specific occasion, where the dealer specifically says, "What is your price today?" and the fellow quotes a price, and he says, "All right, I will buy a car on that specific basis."

Q. Well, now, from what you have told us I am still not clear just what value, if any, The Cement Institute freight rate book is to the salesman. Can you tell 28037 us?

A. Well, it is not absolutely necessary to the salesman. He could get along without it, but in so far as we subscribe to the service, and we have the books available, why, we give them to him. Then, salesmen use them to varying degrees; some salesmen use them more than others.

Q. And as to the salesmen and yourselves, do you make any different use of them than you did of the Nazareth Traffic Bureau?

A. No, we do not; no, sir; the same.

Q. Now, in your billing department, does your shipping clerk use—does he use the official tariffs as well as the freight rate book, or does he use just one, excluding the other?

A. No, he uses the freight rate book; and—

Trial Examiner Norwood: Now, I think he told us about that.

Mr. Leisure: He said they use the freight rate books. He says they use the freight rate books. My question is whether or not they use them to the exclusion of the official tariffs.

Trial Examiner Norwood: Did you?

The Witness: No. We use the freight rate book, but we do not use the tariff unless our shipping department and the railroad billing agent get into some discussion as to whether that rate would hold over that particular 28038 route.

Q. Well, I am not clear what, if any, use do you make of the official tariffs, Mr. Robeson.

A. Well, we naturally have the tariffs available in our shipping department because the tariffs have the routings, the freight rate book does not have the routing. Now, the boys on the billing department do most of their routing by experience. They have repeat customers, and they know such and such a customer is on the Pennsylvania Railroad, and they know that shipment is going to move out of our mill L. & N. E.—that is, L. & N. E. routing Pennsylvania Railroad. They have had that experience with it. Now, every once in a while a case may arise where a customer may call for delivery at some particular siding in his town, which might be different than the place where he normally takes his delivery. In that case, then, our shipping
28039 department would have to go back to the tariff and then check the delivery and the nearest routing necessary and then check the rate. If the rate were higher than the price we quoted the man, we would absorb the difference.

Q. How many railroads serve you?

A. Two, the L. & N. E. Railroad and the D. L. & W.

Q. Are those railroads required to select the route having the lowest freight rate?

A. No, sir; we give the routing. Of course, a railroad tariff gives you a routing and tells you the rate that will apply on that routing, but we reserve the right in our sale with the customer to select the routing. It is usually done as a matter of service because we have the experience with continual movement through junction points.

Q. Have you, Mr. Robeson, used any, or attempted to compile any freight rate books of your own, or considered that question?

A. Never in my time with Nazareth because we have always had freight rate facilities available. I do remember my previous experiences with the Atlas Company in my early days, that they had their own freight rate books.

Q. What was your experience with respect to that? What did you find?

A. I would say the information in those original
28040 books was no different than the information we have today, except I think in those original books it was on a per-ton basis, whereas, our books now are on a hundredweight basis.

Q. Have you given any consideration to the expense of

the two methods? Can you tell us in a word which is the more expensive?

A. Well, if we had to compile our own books it would be much more expensive.

Trial Examiner Norwood: That is right back to the same thing.

Mr. Paulson: Well, I think we should have objected to the question; but being late on that I move to strike the answer. It is a hypothetical proposition now. The witness has not shown he had any experience with compiling his own.

Mr. Leisure: Well, where are we going to find in this case the information as to whether or not the present method is cheaper for this witness' company than compiling his own books; if we cannot find it out from this witness, where are we going to get it?

Mr. Paulson: Find it out from witnesses that know. If nobody knows we will leave it out. We won't get any testimony on it.

Trial Examiner Norwood: I shall allow the motion, and ask this witness if in subscribing for the Institute
28041 freight rate books you figured the cost on it and found that that would be less than maintaining your own freight department; is that right?

The Witness: Yes, it would be, sir.

28043 Q. Mr. Robeson, there has been offered in evidence certain Commission exhibits having to do with identical bids with respect to your company, and instead of taking them separately I am going to try to save
28044 time by summarizing them in one group, where they affect your company, and they are as follows:

9-A-C, 1102-A-C, 15—I am referring now to Commission's exhibits—363-D, 372-A-B, 387-A-J, 1099-D-L, 1099-M-Q; 1099-R-V, 1099-W-2-A.

In the order named, those have to do with the Virginia Highway and the Department of Property and Supplies, and War Department, and the Department of Justice, Navy Department, and Virginia State Highway Commission, being the last one,—suppose I just hand copies of those to you (handing documents to witness).

Summarizing all of them, Mr. Robeson, will you please tell us how you determined the prices you quoted?

A. Well, the prices, in all instances—my instructions would be our commercial price at that destination, that is,

the price at which we offered to sell anybody at the destination involved.

Q. And that covered every one of those?

A. I would say.

Q. Without going through them separately.

A. I would say so, without going through and analyzing each one.

Q. All right.

Now, what is your policy in quoting the Federal Government? Do you use any different manner from
28045 the ordinary practice in quoting commercial buyers?

A. No, we quote the Government the same price that we quote our retail dealer customers.

Q. How long have you done that?

A. Oh, I would say at least since I have been with the Nazareth Cement Company; they probably did that before I came there.

Q. Now, a moment ago, in talking to us about commercial business, you told us your method of attempting to arrive at the lowest going price in any given market at any given time. With respect to these bids, let me ask you, have you discovered that in any of these lettings that your competitors quoted a price different from the price which you had arrived at in the way that you have described?

A. We have had that happen to us on occasion where we didn't get down to the point where our price was as low as the lowest.

By Mr. Leisure:

28046 Q. Let me call to your attention another Commission's exhibit here, 14-A-B, which purports to be a tabulation of bids received by the Department of Supplies, State of Pennsylvania, on May 26, 1937,—it shows that 24 companies bid $2.20, and Nazareth bid $2.22 (indicating).

Would that be one of the instances you have described a moment ago, or is that another situation?

A. That would be one of them; yes, sir. I see we are 2 cents a barrel higher than a majority of the manufacturers.

Q. Well, how do you explain that; I mean, look at that exhibit and tell us what you know about it, if you do know about it?

A. Well, I would say that the Nazareth organization

was probably asleep on it. There was evidently a lower market price in that market than what we quoted, and, on the other hand, in Meadville, which is away west in Pennsylvania, in a market that we don't regularly cover with our field force, so that it is likely we had not developed the latest information in the field there. I notice in this inquiry that there is a number of other points which are in our active territory, such as Easton, Duryea.

Q. Oh, did you put in a higher bid on those points in your territory?

A. No. In other words, in the territory where we were actively in touch in the market, we were evidently as
28047 low as the lowest.

Q. Has your company ever withdrawn, or requested the right to withdraw, any bid made to a governmental agency?

A. Never to my recollection, Mr. Leisure.

Q. There is considerable testimony in the record here covering land-grant rates. Has your company ever quoted the Federal Government where the land-grant rates were involved?

A. There is no land-grant rates, so far as I know, Mr. Leisure, in any of the territory in which we actively compete.

Q. There is testimony here about a so-called control clause. Have you ever used any such so-called control clause?

A. No, sir.

Q. As to these public lettings, Mr. Robeson, do you or do you not follow up such lettings to find out what bids have been submitted?

A. Yes, we do. In the first place, if there is no reporting services available, why, then, we usually have the lettings attended by one of our men, who takes off the results and reports them to us. In a great many cases, now, in the recent years, there have been agencies that spring up that offer to sell such a service, and, wherever possible, we buy those services, and save the time of our men going to the lettings.

Q. You say "services,"—are they designed particularly for the cement manufacturers?

28048 A. No, sir; I have in mind one in Harrisburg and they report on everything from a keg of nails to dynamite, I guess.

Q. Now, there has been considerable discussion here with economists, and others, about the advisability, or lack of advisability, of selling f.o.b. mill. Do your commercial customers request f.o.b. mill quotations?

A. I have never had one; no, sir.

Q. Does the Federal Government?

A. In recent years there has been some inquiries coming through from the Government asking for price f.o.b. mill; a great many of them also permit alternate prices at destination.

Q. Mr. Robeson, have you submitted f.o.b. mill bids on such invitations?

A. We never have; no, sir.

Q. Why not?

A. Well, in the first place, we don't feel that's where the market it. We feel the market is at the point of use, and we want an opportunity to be in competition at that point; and, furthermore, from our standpoint, we are in a concentrated area in the Lehigh Valley, and I have been watching and reading all I can on this f.o.b. mill theory, rigid price. I don't know what it might mean to a company like ours.

Q. Now, you have told us how you keep watch of what takes place with respect to these lettings. What has
28049 been your observation with respect to f.o.b. mill?

When f.o.b. mill prices have been quoted to the Federal Government, as to whether or not the awards were made by the Federal Government on the basis of those prices?

Trial Examiner Norwood: That would lead tremendously to cumulative testimony. The witnesses on both sides have said that they never award on the basis of what it figures back to the mill, but on the basis of what it costs the Government to lay it down at the particular point, and there isn't any use of spending a second of time on that.

28050 Trial Examiner Norwood: No, he can bring out by this witness here that he adheres to this policy because the Government does make the award on the basis of delivered price, but I don't think that anybody disputes that.

Mr. Leisure: Well, I do not—

Mr. MacIntyre: That is, on the basis of a delivered cost.

Trial Examiner Norwood: On the delivered cost.

Mr. MacIntyre: But the Government wants, in every instance, to figure its own cost, in its own way.

Trial Examiner Norwood: That is your side of the story, Mr. MacIntyre: Yes.

Trial Examiner Norwood: That you can bring out,
28051 but I think it has never been disputed. The Government's witnesses have testified and told us just how they make those awards, and many of your clients have testified that that is the reason—one of the reasons—that they don't go to the trouble of making mill prices, that it is useless, it is a vain thing for them to do, I think some of them said.

Go ahead.

Mr. Leisure: Judge, if it shows that it is clear that we are trying to refute that inference of collusion, that he does not want to do a useless act; if the record shows that, then I am satisfied.

Mr. MacIntyre: Well, we would agree that the witness would so testify, that this witness would.

Mr. Leisure: That is the only thing I am talking about, Mr. MacIntyre, at the moment.

28052 A. Well, it has been my observation that the Government buys the cement on the basis of cost at destination.

By Mr. Leisure:

Q. Commission's Exhibit 1339, which I think is the Procurement Good Friday invitation,—is that the invitation you referred to a moment ago when you said that the Government had asked for f.o.b. mill (showing exhibit to witness)—

A. Yes, it is one of them, yes.

Q. —and you did or did not bid on it?

A. We did not bid. We wrote a letter of protest, but we did not bid.

Q. Is Respondents' Exhibit 440 your letter (indicating)?

28053 A. It is my letter; yes, sir.

Q. Explaining why you did not bid?

A. Yes, sir; that is correct.

Q. And does that contain all of the reasons?

A. No, it just contains one of them, one that we just wrote on; we didn't write a long letter, we just said that the proposal demands the price f.o.b. mill, whereas, our

company, for many years, has quoted price only at point of—

Trial Examiner Norwood: That is in evidence. You need not read it again.

By Mr. Leisure:

Q. Well, without referring to the letter, just briefly, why did you write the letter, Mr. Robeson?

28054 A. Well, I wrote the letter because we did not want to quote that way.

Q. Do you feel that the Federal Government is entitled to any special price consideration?

A. No, I do not, sir.

Q. Is it one of your principal or largest customers?

A. No, the Government, as such—that is, in the manner of direct sale to the Government—has never been a very large factor in our business.

28055 Q. What is the largest comparative purchase—what is the largest in any one year, there, that the Federal Government has made?

A. Oh, I think the most we ever sold them was about 3 percent of our total business, and that was about in the year of either 1933 or 1934.

Q. Now, as to your company, is the sales expense to the Federal Government, and other public authorities, less or more than your sales expense to the commercial business?

A. Oh, I would say no different than our commercial business.

Q. You said no different. What, if anything, is your sales department called upon to do in respect to Federal Government sales?

A. Well, when we sell to the Federal Government agency we probably have to do just the same as we do with any contractor we might be selling. Our man in the field would establish contact with the Government officer at that point and would work with him in connection with service and all the things we would do with any commercial customer, such as the contractor. The two would be more or less comparable rather than, say, service to a dealer.

Q. Well, isn't there any advantage in the fact that the Government pays cash, Mr. Robeson?

28056 A. No, practically all—I would say 95 percent of our customers pay cash anyhow.

Q. Take on a large bid, the large scale opera-

tions, are you required to furnish any kind of performance bond?

A. Oh, yes. As a matter of fact, I think anything over, oh, say, a thousand barrels, or something like that, you must furnish performance bond to the Government; don't have to do it to a commercial customer.

Q. Does that include the freight?

A. Yes, performances to that destination.

Q. Mr. Robeson, I would like to direct your attention for a moment to the subject of diversions. What is your procedure in filling an order for a car of cement?

A. Well, we bill it from the mill—we bill it from the mill to the customer at the destination to which it was ordered, and on that bill-of-lading we carry a stamp
28057 saying that it is the property of the shipper, and we expect it to go through to the destination to which it was originally ordered.

Q. Well, do you send one copy of the bill-of-lading to the railroad?

A. Yes. In other words, when you file a bill-of-lading with a railroad at night you bring over the three copies of the—that is, rather, the original copy of the bill-of-lading with the railroad; they sign that one and return that to us and then they keep a memorandum bill of lading for their files.

Q. Well, does anything go to the purchaser?

A. The purchaser receives the invoice.

Q. And what does the invoice show?

A. The invoice shows the customer's name and the destination and routing, the price, the freight allowed, and the net amount and the cash discount allowed.

Q. And does the customer also get a bill-of-lading?

A. He gets a carbon copy of the bill-of-lading. We hold the original bill-of-lading at Nazareth partially as a matter of service in making claims; in event the customer has a claim against the railroad, we have the papers there. However, the customer can have the original bill-of-lading any time he should request it.

Q. Does the customer receive the invoice prior to the arrival of the car?

A. Oh, in most instances he would except where
28058 the car makes an overnight delivery. There are a number of points nearby the mill where the car would be delivered over night, too.

Q. And who pays the freight?

A. The customer pays the freight for our account.

28066 Q. Mr. Robeson, on this subject that we are discussing; namely, diversion; how, in your experience, is the diversion accomplished, if at all?

A. How is diversion accomplished by the customer who diverts?

Q. Yes.

A. Well, the customer would order a car to one destination and then he would notify the railroad to deliver it to some other point, some point where the price might be higher or some point where he would want to get

28067 our product to a point where we would not want to sell him.

Q. Well, how can you deliver—how can your tell which particular car it is?

A. Well, we cannot tell. Let me put it this way: Unless we trace a car through we just assume the car went to the point where it was consigned.

Q. And can you trace a car through?

A. Oh, you can trace a car through by the railroad, asking the railroad to trace it and report delivery to you. That would be one way.

Q. With regard to your invoice, or—

A. No, with regard to your normal relationship with the railroads. You file your bill-of-lading with them, ordering that car shipped to a certain point, then we ask the railroad to put a tracer on it, and the railroad would report back to us where that car was actually delivered.

One other way, we would learn of a diversion if a diversion went into a town where we would not want to sell the particular dealer. Our local dealer would pretty soon call it to our attention that there was a car of Nazareth in town belonging to another fellow.

Trial Examiner Norwood: Now, you are telling us now how you find out where there is a diversion. We are interested in knowing why you do not want the shipment diverted.

28068 The Witness: Well, there are two reasons, Your Honor. In the first place, as I said before, the customer agreed to buy this car from you at a certain point at a certain price. Now, then, he may divert that car to another point where it would be more favorable to him in

the way of price; in other words, he might be able to defeat your marketing price at the point of final diversion.

The other important point to us, too, probably the more important of the two, is that we have relationship with dealers, whereby the dealer handles our brand of cement. Well, he does not handle it exclusively. He may be giving us the major portion of his business. Now, in turn for him giving us his good support we also give him support in that market. We may develop a specification for our brand.

Now, then, that dealer handles our brand locally. He expects we would confine our sale in that town to him. Now, if he finds the car on the track of another fellow, then he believes we have broken faith with him.

By Mr. Leisure:

Q. How can the dealer tell what part to divert from what you have told us?

A. Well, the dealer—for instance, we ship a car of cement to a dealer today, in most places on mail delivery;
28069 he would have his invoice and bill-of-lading the following morning, and if it was a point where the normal railroad movement to that point might be, say, two or three days, he would have two or three days to do it.

By Mr. Leisure:

Q. Do you have any system of invoice that carries any number that will give that information?

A. Well, he would have the invoice from us which would give him the car number, and then with that car number he would be able to make a diversion. The invoice would give him two things, it would give him the car number and the routing; he would know the direction in which the car was coming.

By Mr. Leisure:

Q. Does your company then make—from what you have said on this subject— Do you have any what you might call a policy in dealing with the problem?

A. Yes. We have a very definite policy that we will not knowingly permit diversions.

28070 Q. And how long have you had that policy?

A. Oh, I would say that policy has been in effect

ever since I have been with the Nazareth Cement Company.

Q. Now, you told the Examiner how this subject of diversion affected your dealers. How, if at all, does it affect you—I mean, the manufacturer?

A. Well, it affects us from the standpoint that if it got into a town where we had agreed to let the sale of our product alone to one dealer and another dealer came in there, it would cost us the good will of the dealer in that town. That would probably be the most serious thing that could happen to us.

Trial Examiner Norwood: And does diverting make a savings in the expense,—he would be enabled to undersell your dealer?

The Witness: Well, I have seen a number of diversions, Your Honor, where the dealer in a town not only did not save any money, but he also was out the diversion charge; but, nevertheless, in order to get our brand in that particular town where we would not sell him, he was glad to go to that expense.

Trial Examiner Norwood: Well, you cannot prevent him from doing that, diverting?

The Witness: Well, we tried to keep him from diverting, that was our idea, to keep him from doing it.

Trial Examiner Norwood: If he is going to do it 28071 at a loss, he could do it without diverting?

The Witness: He could do it of his own—out of his own home town, truck it over, and we would have no control over that, and our own local dealer could not criticize us.

By Mr. Leisure:

Q. Is your price, or is it not, the same to all purchasers at the same destination point?

A. To purchasers similarly situated, it would be the same; yes, sir.

Q. It is?

A. In other words, if there were two dealers in a town, our price to the two dealers, we would naturally make the same; that would be our policy, to see that they were both equally treated alike.

Q. Does this subject we are now discussing of diversions,—does that have any effect on that policy? If so, what?

A. Yes, it could have an effect on that policy very much, if the dealer would order a car to a point where he was able to effect some saving; in other words, beat his cost on our brand at that destination where we sold the car.

28072 Q. When you do meet this problem how do you determine—how do you find out whether or not your cement is being diverted, Mr. Robeson?

A. Well, one, if the car was diverted into a town where we originally would not have shipped the original purchase, our dealer in the second town calls it to our attention very quickly.

Q. When that situation which you have just told us about arises, what do you do about it, if anything?

A. Well, if the dealer has diverted the car into a town other than the one we ship him originally, and there is no difference in the price between the two towns, there is not very much we can do about it except to go and tell him he broke faith with us, he ordered his car for one destination and he has disturbed our relationship with a very good customer we have in that town, and for that reason we won't ship him again if he is going to make a further diversion; and we also—pardon me, I was going to drift into slang—and to clear our skirts, we go back to the customer in the second town and make our

28073 peace with him, so we show him that we were not a party to the diversion, which was done unknown to us.

Q. Do you make any effort to collect the difference in price?

A. If there was a difference in price.

Q. Do you take any legal action with respect to it?

A. We never have; no, sir.

Q. Why?

A. Well, the amount involved has always been so small that it is the same old story, of costing you more to sue the man than you get.

Q. Now, have you ever had any clause in your invoices relating to diversions?

A. In our invoices?

Q. Yes, sir. I say, have you ever had any clause in your invoices relating to diversions?

A. I am not so sure that we had a clause in our invoices. I would have to check it with our detail staff.

We do have such a clause in our quotation, which is our first step to the customer; it is our offer to sell him.

Q. Let me show you Respondents' Exhibit 1435, and see if that refreshes your recollection,—Respondents' exhibit, for identification?

A. No, this does not show me anything, Mr. Leisure. I would have to check it with my detail staff as to whether or not they put—add anything to this.

28074 Q. It is not—

A. It is not on the invoice, no.

Q. It is not on the invoice?

A. No.

Q. However, can you tell us whether or not you have ever rendered your invoices on a full basis, no freight allowed?

A. We did for a short period. Mr. Wooden asked me that question, as I recall, at the time I was on the stand in Washington. I told him at that time we did not. I went back to Nazareth and asked our people, and checked our records, and I found that for a period in May, 1929, to about the middle of August, 1929, we billed on a full basis, no freight allowed.

Q. What was your purpose in doing that?

A. There was, at that time, if I remember the situation,—there were diversions up in that territory, and we figured that we might—that that might be one step.

Q. How would that disturb it?

A. Well, we figured that by running a car through as we did, we could run it right through to destination, and we had the customer to send back to us the paid freight bill showing that the car was delivered that point as part payment of that invoice. That was the idea we tried out, as I say, in 1929, and abandoned it in the middle of August.

28075 Trial Examiner Norwood: Well, wouldn't your prepaying the freight get around that?

The Witness: Yes, it would, Your Honor, but it would be awfully hard on a small manufacturer in competition with our larger contemporaries, who have a lot more capital than we have.

By Mr. Leisure:

Q. Did the return freight bill show whether each consignment in transit had taken place?

A. No. We found, as a matter of experience, that there

were freight agents up there that were working with some of the dealers, and they would give them the freight paid bill and still divert the car.

Q. Do you know whether those diversions were or were not more numerous than were other markets?

A. Yes, they were numerous in that section because at that time, as I recall it, there were the so-called arbitrary prices prevailing in that locality, special low prices made by reason of foreign competition. That is my recollection of it.

Q. What was the purpose in discontinuing,—rendering your invoices on this basis?

A. Well, the customers did not like it, for one, and they began to make that a condition under which they would or would not give you the business. We found that there were other companies, competitors of ours, who were not doing it, and naturally they were being favored with the
28076 business, and we either had to do it or forego the business.

Q. Well, there was an interruption there. I am not just sure whether you told us the policy was a failure or a success.

A. A failure, I would say.

Q. Do you know why?

A. Just for two reasons. One principal reason was, as I said before, that we found that the local freight people, the local railroad people, were working with the dealers and would give them the paid freight bill showing delivery at that point and still diversion would be made. As I say, the thing was only in for about three months, if I remember correctly, and we shipped a very limited amount of cement.

28079 The witness identified Resp. Ex. 1439 A and B as a present trade quotation blank of Nazareth.

Trial Examiner Norwood: Is this similar to the ones that were received a short time ago?

The Witness: No, they were information we picked up in the field on competitors. This is our own blank, Your Honor.

28080 (RESP. EX. 1439-A and 1439-B was offered and received in evidence.)

By Mr. Leisure:

Q. Does your company assume the risk of loss or damage to the goods intransit, Mr. Robeson?

28081 A. Well, we do, to this extent, that we advise our customers that if they will send us the proper papers, noted by the freight agent, which will support the claim, we will prosecute the claim with the railroad. Now, from a practical standpoint it means that when he makes the claim and gives us the proper papers we reimburse him immediately, and then we make the claim on the railroad and collect from the railroad.

Q. Do you have in your contract forms today any provision relating to diversions?

A. Yes, sir; we do. We have clauses against the two types of diversions in our specific work contract form, one is the diversion which would be similar to a trade diversion, or diversion from one spot to another; the other is the diversion against the use of the cement covered under straight contract for some other use, which is not specified.

Q. Have those been your forms for some time?

A. They have been in since the Code period, I would say.

28082 The witness identified Resp. Ex. 1440 A and B as a Nazareth combination specific job quotation form and contract form, dated around 1920; Resp. Ex. 1441 A and B as a Nazareth combination specific job quotation form and contract form in use in 1926; Resp. Ex. 1442 as a form in use at the present time. Diversion against use was in use in the 1920 form of Resp. Ex. 1440 B. These are the forms that were in field, but witness does not find that clause in the 1920 (form).

28088 (RESP. EXS. 1440-A, 1440-B, 1441-A, 1441-B, and 1442 were offered and received in evidence.)

By Mr. Leisure:

Q. Do you have any diversion clause in your current forms?

A. Do you have reference to the contract form?

Q. Yes.

A. Or the trade quotation form?

Q. Yes, the contract form.

A. Yes, there is.

28089 Q. Have you changed that wording since the clause at the end of the N.R.A. Code period, or have you continued to use it?

A. We have continued to use it.

Q. Do you have, or have you had at any time any com-

plaints from any customer concerning the presence of that clause in your contract?

A. Not to my recollection; no, sir.

Q. How has it worked out? I mean by that, the use of this diversion clause, has it had any effect on your customers, so far as diversions are concerned?

A. I would say that there are probably fewer diversions today than there were years ago.

Trial Examiner Norwood: Well, their diverting customers did not like that step, did they?.

The Witness: Well, I haven't heard any protest on it, Your Honor.

By Mr. Leisure:

Q. Have any of them continued to divert, in spite of that clause?

A. None that come to our knowledge.

Q. Now, as to your job contracts, do these specific job contracts count for all the shipments?

A. Specific job contracts; no, sir. The percentage varies from year to year, you might say.

28092 Q. Did you take that up in connection with any other competitors? In other words, how did you come to use that stamp?

A. It was originally called to our attention, the possibility of using the stamp by our local railroad connection; if I remember correctly, I think it was the Lackawanna, that is when it first came to our attention.

Q. What do they call to your attention? You mean they would want such a notation?

A. Yes.

Q. Or would not want it? What?

A. They told us they would want it, if we would write them and say that we wanted to make it part of our transactions, that they—so I wrote them a letter and told them that we intended to use it, and they, in turn, acknowledged the letter, and since that time we have been putting it on our bills-of-lading.

Q. Did you receive any communication from any other competitor concerning this matter?

A. About, to my knowledge, I believe—but I do not think so—it seems to me I had a letter. I am not sure now whether it was a letter from a railroad in which they ad-

dressed a joint letter to me along with a couple of other companies evidently in answer to my letter to them.
28093 I think that is what it was.

Q. Well, what I am coming to, is whether or not you, or any of your officials of your company, have had any arrangements with any other competitors regarding this policy?

A. No, sir. I will say no.

Q. Have you ever permited customers to truck from your mills?

A. Yes, we did, at one time.

Q. When was that?

A Well, there was some little trucking going on when I first came over with Nazareth, in 1924, and I would say that continued up to 1929, or thereabouts.

Q. Was there trucking at your mill prior to 1929?

A. Prior to; yes, sir.

Q. On what basis were those sales made?

A. Well, in the early days local farmers would come around with their trucks and call at the mill and that got to be more or less of a nuisance because you never knew when they were coming in or what kind of truck was coming in, or how much they were going to take.

Q. What tonnage did that business amount to, if you know?

28094 A. Oh, infinitesimal, did not amount to anything at all; then along about 1930, I would say, probably, was the first real trucking to the mill.

Q. Did you have any trucking, any truck loading platform, if you know?

A. We did at one time; yes, sir.

Q. And where was it situated?

A. Well, it was just a little bit of a makeshift affair right alongside the place where we packed our cars.

Q. How did you handle that situation? Did you handle the truckloadings separately from your carloadings? How did you handle it?

A. Yes, you had to do that. We did not have any packing crew that was specifically a truck packing crew, and the call of trucks was sporadica, so that what we would have to do was to take our packers for cars and put them on that loading platform to load whatever truck happened to be there.

Q. What, if any, difference is there between loading the trucks and loading the cars?

A. It is much more inconvenient and—much more inconvenient, let us put it that way, in loading trucks as against loading cars. Loading cars you have normal routine, your belt carrying bags out from the packing machine, right out to the car, and, furthermore, you can load your cars in anticipation of orders coming in. In other words, you load your cars on the basis of a
28095 normal call for cars, 132, 173, which is the sizes called for mostly, and you can keep your packing crews working on the same level basis, on a more level basis than you can with truck loading.

Q. Well, couldn't you also provide for loading trucks in advance?

A. You cannot for the simple reason that your demand for a truck load comes when the truck comes to your plant. In other words, you can order your freight cars in the morning from the railroad, and plan your day packing, but you cannot do that with trucking, or could not, rather.

Q. How did this truck situation go with your laborers?

A. Labor did not like it, for that reason, that they are piece workers, contract workers, and pulling them off their car loading and putting them over on truck loading, which were odd sizes, and things of that sort, it interfered with their earnings. They could make much more money loading cars.

Q. Now, is your packing house designed for truck loading?

A. No, sir; we have no real facilities for truck loading at our plant at all.

Q. Do you have any railroad companies on your grounds?

A. Yes, unfortunately, we have a very bad hazard there. The main line of the L. & N. E. Railroad runs right through our plant. As a matter of fact, that is one
28096 of the reasons why we were opposed to loading trucks; we had a couple of accidents there, one of which could have been very serious.

Q. You mean your trucks had to cross the railroad tracks?

A. Outsiders' trucks. It is bad enough with our own trucks. Our own trucks know the hazard, and still we had one of our trucks hit the other day.

Q. I asked you a question as to whether you meant your trucks had to cross the track, the railroad track.

A. Yes, sir. They have to cross the main line of the L. & N. E. right in our own plant.

Q. Well, now, what is the unit, the ordinary unit of sale that you deal in, Mr. Robeson?

A. The minimum carload, 132 barrels.

Q. And how did your average truck sale compare with—I mean in quantity—with your average carload sale?

A. Oh, your average truck sale would be, striking an average, it is my recollection they would be around—what a truck was hauling in those days—anywhere, from 15 to 25 barrels.

28097 Trial Examiner Norwood: Well, let's ask him if it did. Did it slow up your operation?

The Witness: Yes, it did, very much; yes, sir.

28098 Trial Examiner Norwood: Did you make a cost survey. Do you know the figures in regard to this comparative cost as between rail and truck?

The Witness: Yes, but I would know them, Your Honor; I am right there at the mill.

By Mr. Leisure:

Q. Give them to us.

A. I do not know the exact cost per barrel, but I do know there was an increased cost in handling trucks against loading the cars.

Q. Now, you told us that your plant was particularly advantageous—I am not trying to quote your words to you—you told us you had the railroad siding in your yard; you had no special truck facilities. Did you give any consideration as to the advisability of putting in the improvements that would be necessary for truck facilities?

A. Well, not in the nature of an engineering survey of it, but with our experience we would have to go down a ways from where we are—

28099 The Witness: We would have to build an additional pack house, put in packing machines, and put in conveying equipment to carry the cement over to those packing machines.

28100 Q. Now, however, did you keep any figures, Mr. Robeson, as to the amount of cement that you shipped by truck during the period that you loaded your trucks at the mill?

A. We did have figures on them; yes, sir; at that time.

Q. Can you tell us, to your knowledge, what the greatest tonnage that you shipped by truck in any one year in relation to your total shipments were?

A. I would say the greatest amount we ever had was less than 3 percent.

Q. You told us before, I believe, that your principal markets, your largest markets, were the metropolitan districts of Boston and New York?

A. The principal market is in New Jersey and New York; that is, the metropolitan market of New York.

Q. Yes.

A. That is the most important market we have.

Q. Yes.

Now, I would like to ask you whether or not you consider that trucking is available as a means of transportation to either of your principal markets, namely, Boston and New York?

A. I would say that there would be no availability of trucking to either of those markets.

Q. What is the rail rate, if you know, for cement from your mill to New York?

28101 A. The lowest rate in town is 42 cents a barrel.

28109

Brooklyn, N. Y.,
December 6, 1939.

28114 JAMES W. KEMP, called as a witness for the Commission, being first duly sworn, testified:

Direct Examination by Mr. MacIntyre.

28115 I am a lawyer with an office at 70 Pine Street, New York, and have been so engaged for about 13 years. Previous to my practice of law in New York I was employed by the Department of Justice as a special agent from January, 1914 to September, 1927. My duties in that capacity involved contact with members of the ce-
28116 ment industry in that some time in 1917, I think it was, I spent considerable time in the so-called Rocky Mountain States investigating activities of the cement man-

ufacturers. Subsequently I was engaged in the same type of investigation in and around Kansas City and through the states adjacent to Missouri. Some time later I was on the Coast and assisted in the prosecution of a group of manufacturers in Portland, Oregon. Some time subsequently, probably around 1920 or 1921 I assisted in the investigation of the industry around New York and in the trial of certain cement manufacturers. Accordingly, from my statement, I have made some study of the cement industry over large sections of the country.

Q. Mr. Kemp, I now hand you two bound volumes of papers which have been marked for identification in
28117 this case as Commission's Exhibits 3235-A to Z-114, and Commission's Exhibits 3236-A to Z-107, inclusive, the numbers including outside covers as well as inside material of those volumes (handing documents to witness).

28118 Q. Will you please tell us, Mr. Kemp, whether or not you recognize those exhibits, and, if so, as what?

A. I think I could say that I recognize these exhibits as having been made from records which were at the time in my custody, and—

Q. Well, will you tell us what they are, further than describing them as records?

A. Yes, I think so. The original records which I had were known as the Portland Cement Association records, records of what purported to be minutes of meetings of different manufacturers of that association, going back, I think, as early as 1903, and coming on up to 1911, or probably even after that.

Is that sufficient?

Q. Well, what are these papers that you have described?

A. These papers are excerpts from those minutes, which were in my custody at the time.

Trial Examiner Norwood: Well, where did you get the originals from which you copied that?

The Witness: The originals came from the Portland Cement Association office in Chicago. They came to me either pursuant to subpoena duces tecum served on the Association—this would be more or less a conclusion, I guess, because my recollection is not clear.

Trial Examiner Norwood: Tell us what you know about it.

28119 The Witness: My best recollection is that they were produced in response to a subpoena duces tecum. They were brought to me by some other agent who was working under my supervision at the time on the case.

By Mr. MacIntyre:

Q. Who produced them under that subpoena?

A. I think it was Agent Boyle, I think is the man who went to Chicago and called on the secretary of the Association there, and it was through his efforts, as I recall, that these came. The originals came into my possession, and having the originals in my possession I had stenographers to make certain excerpts from those originals and these I identify as those excerpts, and the excerpts here were compared by me and two other agents, I think, with the originals.

Q. And you vouch for the accuracy of these as reflecting the portions of the originals which they purport to be?

A. As far as they go, I would say yes.

Q. Well, do you recall who the secretary of this Association was at the time that these were secured from him, Mr. Kemp?

A. I think his name was Kinney, K-i-n-n-e-y.

Q. Now, Mr. Kemp, I show you Commission's Exhibit, for identification in this case, marked as 3237-A to H, inclusive, and ask you to state whether or not you recognize those, and, if so, as what?

A. I recognize the first paper as a carbon copy of a letter.

28120 Trial Examiner Norwood: That is what?

The Witness: That is 3237-C.

Trial Examiner Norwood: Yes.

The Witness: Which I wrote to Mr. Kinney in October, 1921.

The second paper, 3237-D, is a list of the minutes of Portland Cement Association, which I returned to Mr. Kinney on or about that time.

By Mr. MacIntyre:

Q. Well, what, if any, connection does D have with C?

A. Well, D was the enclosure which I submitted as a list of the records, the original records, returned to Mr. Kinney, a list showing the records returned from October, 1902—I think at the end here it reports 1920.

Q. What are the other papers, can you tell us?

A. 3237-H is a letter, which I got back from Mr. Kinney's office. It seems to have been signed by J. W. Johnston.

Q. Is a reply to a letter that you just made reference to?

A. A reply to my letter of October 25.

Q. Which is marked as what?

A. 3237-C. I notice here 3237-E and 3237-F appears to be registered receipts which were returned to me at that time in connection with those records which were returned by registered mail.

I probably should have given you 3237-A, which 28121 are registered receipts.

Trial Examiner Norwood: That is A and B.

The Witness: That is A and B. Those receipts are the same,—are in connection with the records returned.

Trial Examiner Norwood: Your description went to 3236-A to Z-106, also.

Mr. MacIntyre: Yes, sir. It covers 3236, 3235, 3237, as I understand it.

Trial Examiner Norwood: All right.

Mr. MacIntyre: That is all, Mr. Kemp.

Trial Examiner Norwood: Do you wish to examine him?

Mr. Leisure: May I see those?

Mr. MacIntyre: Is that for voir dire examination?

Mr. Leisure: Yes, sir.

(Mr. Leisure examines exhibits referred to.)

Examination on Voir Dire by Mr. Leisure.

Q. Mr. Kemp, this 3235-C to Z,—what year was that prepared, if you know?

A. That is the list of exhibits, is it not, and that is attached to the letter?

Mr. Paulson: I suggest Mr. Leisure show the witness the papers.

Mr. MacIntyre: As to which one he is speaking about.

28122 Mr. Leisure: I thought perhaps you knew. It is the one marked Roman No. I of these two large booklets.

The Witness: Oh, well, those excerpts were made at or about the time that the originals were returned.

By Mr. Leisure:

Q. The year,—I was trying to get that in mind.

Mr. Paulson: The witness should be shown the exhibits, Your Honor please.

Mr. Leisure: If he needs it he can have it.

A. Well, I would say it was around 1920, '21, somewhere in that general neighborhood. This is the last year, a year or two there.

By Mr. Leisure:

Q. Were these books both prepared about that time?

A. At or about that time.

Q. 1920 or 1921?

A. Yes, at or about that time.

Q. Now, as to (referring to Commission's Exhibit 3235) —I notice this one that you have marked with the Roman No. I, which has been marked Commission's Exhibit 3235-A to Z, is paged up to 137 pages. I don't understand that you personally compared this with each one of the originals,—that is, you are not in position to say that?

A. Well, I am not in a position to say that I compared every page; but I am in position to say that the 28123 pages that I have initialed, which you may be able to discover by looking through there—

Q. Yes, I notice the initials.

A. —I did compare those pages.

Q. And as to those pages, you can vouch for the correctness of the originals?

A. Yes.

Q. As I understood you, as to the others you did not prepare them personally?

A. Oh, it is my best recollection that I did, but I would rather not be positive that I actually compared every page with the originals, although I think that I did.

Q. Well, your purpose in initialing certain pages was that those were the pages that you compared with the original?

A. My purpose in initialing those, if I may say so, was that I thought those pages were particularly important to me at the time.

Q. Well, did you compare some other pages other than the ones that you have initialed?

A. I probably did; I believe I did.

Q. Is there any way that you can tell us now which ones

of those pages were compared, Mr. Kemp? Can you tell us what the pages were that you personally—

A. It would probably take a little time to go through here.

Q. Is there any way that you can generalize on it
28124 and tell us. You told us that two other agents assisted you in this comparison?

A. That's right, sir.

Q. Can you give us any idea what proportion was done by them and what proportion was done by you?

A. Well, the assistance that I had was by the agents whose initials appear with mine (examining exhibit).

Trial Examiner Norwood: Did you initial the majority of the pages there?

The Witness: I would rather not undertake to say how many pages I did initial. I think that I initialed at least an appreciable number of them.

Trial Examiner Norwood: Yes.

The Witness: Because, as I recall, I spent probably a half a day or day in doing it, and with a couple of other men at the time, and—

By Mr. Leisure:

Q. How long did you take in comparing them? Do you have any recollection as to that?

A. At least a day or so.

Q. At least a day or so, and the other men were working with you at the time?

A. Were working with me, one at a time; there were two shifts.

Q. Would it be fair to say that you compared
28125 one-third of them, and they compared a third each?

A. I would rather not undertake to say who compared this,—these pages that are not initialed by myself.

Q. No, I am just thinking as to your best recollection of what happened; you say that two men worked with you.

A. Two men worked with me.

Q. And you took from a day to two days doing it. Now, I am asking you whether or not you compared about a third, and they compared about a third each.

A. Well, if I may—

Q. If not, what was the proportion, in your best judgment?

A. If I understand what you mean, our methods of comparing would be, as I recall, this, that one of us would take

the original and read from it, or vice versa, and the other man would follow the copy.

Q. Yes.

A. And when we read the page and found out it compared with the original, then we would initial that particular page.

Q. And sometimes the other two men did that together; is that so?

A. No, no. These pages that are initialed in each and every instance I read and compared with one of the men.

Q. Yes, I understand that.

Trial Examiner Norwood: One man read and the other held copy; is that right?

28126 The Witness: That's right.

By Mr. Leisure:

Q. As to the pages with your initials, I am clear on that—

A. Yes.

Q. —but. I am talking about the ones that are not; I mean the ones which you told us a moment ago,—the pages that you told us a moment ago that were compared by the other two men. I am trying to get some idea of what proportion, if you know, or what parts of these two exhibits were prepared by them.

A. I wouldn't know that.

Q. Can you give us any estimate?

A. I probably—it is my best recollection that I compared the entire two volumes with the original, because I worked with them, and, if I may say so, I see my marks of red pencil marks, as I recognize, and other marks through here (referring to exhibit).

Q. Of course, that was after it was written, wasn't it?

A. After it was written—well, of course, the comparisons were made after it was written, too; they were more or less my work copies, that I worked with.

Q. That you were using in the trial?

A. That I was using in the trial.

Q. I am not asking you as to that.

A. I understand.

Q. I am just asking you about the excerpts that 28127 were taken out.

Well, is it your testimony now that these other men did not compare any of these in your absence at all,

and that you compared the entire two volumes yourself, personally—is that what you want us to understand now?

A. That would be my best recollection.

Q. That you did the whole thing yourself?

A. Well, assisted, of course, with others, yes.

Q. And you compared the whole thing, personally?

A. I would think so.

Q. That is your—

A. That's my best recollection; it is—

Q. Who were these other two men?

A. One of them was C. R. Walsh.

Q. Do you know where he lives now?

A. I do not; I haven't seen him.

Q. What was the other man's name?

A. Dowd.

Q. Do you know his initials?

A. I can probably get his initials, here.

Q. Will you do so, please?

A. (Referring to exhibits.) Well, I might have to correct myself on that. I see here the initials are C. R. W. 28128

Q. Who was that?

A. I think that's Walsh, C. R. Walsh. Walsh and Dowd are both Irish names, and I had a group of Irish fellows working with me, Doyle and I think Dowd and Walsh, and some others.

Q. You mean there were more men than two that assisted you in this?

A. No, no.

Q. In this comparison—

A. No.

Q. —or that has something to do with another matter?

A. I think the only man who assisted me here would be Walsh, and probably one other fellow whose initials I might be able to—

Q. You mean not Mr. Dowd?

A. It is my recollection that he did help, but—

Q. Do you know what Mr. Dowd's first name is?

A. I think it was James.

Q. James Dowd?

A. I think so.

Q. Do you know where he lives now?

A. I haven't the slightest idea.

Q. Well, anyway, as I understood you, in talking to

Mr. MacIntyre, some of these men compared part of this and you compared part. Now, I would like to finish it
28129 up, and just get your best recollection as to what proportion of this that you compared with the original, and what proportion they compared with the original.

A. Yes, I undertook to say that it is my recollection that what is represented here are excerpts from those minutes prepared by myself, and checked against the originals, and—

By Mr. Leisure:

Q. And—

A. —that—

Q. —do I understand that you want to change, or in any way vary your testimony to Mr. MacIntyre—

A. No.

Q. —that they did part of it—

A. No.

Q. —and that you did part of it?

A. No, I don't. No, I don't think I want to change anything that I said to him.

Q. Then, can you give us any idea what part you compared, and what part they compared? I mean, as to either volume, or as to specific pages?

A. Well, you have two volumes here—

Q. Yes.

A. —and they seem to be numbered—268—and a
28130 second volume, 137, is the last page on the first volume. I don't know just how these are numbered.

Q. Yes.

In those two pages, what proportion of it would you say that you compared personally with the original, and what proportion did they compare personally with the original?

A. I would say that I compared the entire contents of these two volumes with the originals.

Q. With Mr. Dowd or Mr. Walsh?

A. Yes.

Q. The entire two volumes?

A. Yes.

Q. That is, you did that personally?

A. Yes.

Mr. Leisure: That is all.

Direct Examination (Continued) by Mr. MacIntyre.

Q. Just one further word, if I may, in the light of the cross-examination:

Did I understand you when I was questioning you about these, Mr. Kemp, to say that irrespective of the manner in which comparison was made that since it was made under your supervision and direction that you are now ready to vouch for the accuracy of these as reflecting those original minutes of which these purport to be copies?

28131 Mr. Leisure: I object to that question. There is no showing here that the shop book rule applies. There is no showing that these men were his employees, and that this was being done in the regular course of business; something that was done every day. They were independent investigators, from all that the record shows. If he prepared them personally he can vouch for their correctness, but if someone else did it I submit that that is an improper question.

Trial Examiner Norwood: He can give us his method and the result of his checking, whether he found them correct or whether he did not.

28132 Mr. MacIntyre: Or portions of copies, as the record should show.

A. I believed at the time, and I believe now, that they are accurate copies, and I had the originals in my possession for a long time and worked with the originals, and worked with these copies, and numerous other officials were doing the same thing daily, and we thought they were correct.

Mr. MacIntyre: That is all, Mr. Kemp.

Trial Examiner Norwood: Did these papers come from the files of the Department of Justice?

Mr. MacIntyre: These particular papers?

Trial Examiner Norwood: Yes.

Mr. MacIntyre: They are from the files of the Department of Justice.

In that connection I may ask Mr. Kemp one further question:

By Mr. MacIntyre:

Q. What did you do with the papers after you had used them in the manner that you have described here?

A. The original papers you are referring to?

Q. These papers, yes, that you have identified here this morning.

28133 A. Well, as indicated by that correspondence, I returned them to Mr. Kinney.

Q. I am talking about these particular papers, these copies, what did you do with them at the time?

A. Those were official records of the Department of Justice, and I so regarded them, and they were left in the files with all the other papers in the case.

H. B. ROBESON thereupon resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Leisure.

Q. Mr. Robeson, when we adjourned yesterday we were discussing the subject of trucking and the experience of your mill with respect to that.

When you were trucking were your truck prices for sales made at the platform equal to your carload shipment prices, and how did that arrangement occur?

A. Well, originally, as far as I know, we first started to load trucks at the mill, they charged the same price for the cement loaded on the truck as our maximum mill net.

Then, I believe, in 1929, we then advanced our price
28134 15 cents a barrel; that is, we put a 15-cents-a-barrel loading charge on it, and that continued until trucking was finally discontinued.

Q. And were your sales made at the platform price your maximum mill net which you received on carload shipments, or did you have some other arrangement?

A. No, prior to 1929 the price received would be equal to the maximum mill net on carload shipments.

Q. Did you sell to trucks on any other basis during the period that you did sell to trucks at your mill?

A. Well, subsequent to 1929 we charged 15 cents a barrel loading charge. That 15 cents would be added to our maximum mill net on our carload shipments.

Trial Examiner Norwood: For what purpose?

The Witness: Well, Your Honor, we found trucking to be interfering with the rest of our business.

Trial Examiner Norwood: Well, I mean, you added that in what cases,—in what circumstances?

The Witness: In case of anybody who called at our mill with a truck.

Trial Examiner Norwood: Fifteen cents over and above your maximum mill net on railroad shipments?

The Witness: That is right.

28135 By Mr. Leisure:

Q. Did you send out any announcement to that effect?

I show you Respondents' Exhibit 704 and ask you to tell us what it is.

A. 704 is a letter sent out by the Nazareth Cement Company and signed by me, announcing that we were adding the 15 cents; in other words, we just stated a price here which included that 15 cents.

Q. What led you, Mr. Robeson, to adopt that policy?

A. In the first place, our experience with trucks calling at our mill was a very unsatisfactory one to the operating department, and the fact that we were up against additional costs as against our rail loading, trucks would call at our mill at all hours of the day and we had no way of anticipating them, and we had no way of regulating them, so we frankly put this on to minimize the amount of trucks and the amount of cement going out of our mill by trucks, or number of calls at the mill by trucks, and also to compensate us for the additional cost we were put to.

Q. At the time you put that on had you formed any conclusion on your own policy as to trucking? Did you have any other thing in mind in putting on the 15 cents' charge other than what you have told us?

28136 A. Well, the trucking of cement was mixing up our operation entirely at the mill; in addition to the fact that the trucks coming there were beginning to expose us to a hazard.

Q. Did you have any consultation or any kind of contract with your competitors before you put in that 15 cent charge?

A. No, sir; we did not.

Q. That caused you to do it?

A. No, sir.

Q. What is your practice today, Mr. Robeson? Do you permit customers to come to the mill in their own trucks and take delivery of cement?

A. No, sir; we do not.

Q. Does your company own or operate any trucks for the delivery of cement?

A. No, sir; we never did.

Q. Have you ever owned any trucks?

A. No. We have a few odd trucks that we have for use around the plant, that we use to pick up emergency supplies.

Q. I mean for the delivery of cement.

A. Never to deliver cement; no, sir.

Q. Did there come a time, Mr. Robeson, when you discontinued delivering to customers' trucks altogether at your mill?

28137 A. Yes, in the summer of 1932.

Q. And what led you to do that?

A. Well, we found announcements in the field that other manufacturers were discontinuing loading trucks. We had been under considerable pressure by a number of our dealers around in the locality asking us to discontinue loading trucks, and at the same time, even with the 15 cents on there, we still found that trucking was a very unsatisfactory operation.

Q. Now, this 15-cent charge that we were just discussing, did you charge that on every truck delivery?

A. On every truck loaded at the plant; yes, sir; to the best of my recollection.

Q. You said the dealers were complaining; what was the nature of that complaint, if you know?

A. Well, first off, the dealers were complaining, in the first place, that we were holding their trucks off. We had no way of telling when the trucks were going to arrive, and as those things would happen they would come in bunches. We did not have the facilities to load their trucks and get them away. They were complaining about their cost of their trucks being delayed and then in other instances we had complaints from our dealers, taking some of the towns where we had sold one dealer exclusively in that town for a number of years, and he would complain to us cement was being loaded at our mill and being trucked in his town where he had worked with us for years in
28138 building up a demand for one brand in that town.

Q. Was the elimination of trucking at your mill the result of ~~any agreement~~ or understanding with any of your competitors to truck or not to truck?

A. No, sir. When we found announcements in the field we were tickled to death to get rid of it.

Q. I would like to ask you the same question with regard to the railroads: Were you influenced in your decision to give up trucking by any agreement or understanding with any railroad?

A. No, sir.

Q. Was your company interviewed by a representative of any of the railroads with respect to your giving it up,—or not giving it up?

A. Not to my recollection; no, sir.

Q. Now, take up the question of water shipments a moment, Mr. Robeson:

Is your mill so situated that water is available as a method of transportation?

A. No, sir; we could not load directly to boats; no, sir.

Q. You have never used water?

A. We have used water in New York City where we ship cement by rail from our mill to tidewater and then load it on a boat.

Q. Does your company come in contact with the competition in imported cement?

28139 A. Yes, sir; we do.

Q. Where?

A. Principally in the New York and Boston markets; also around the Philadelphia markets on occasion.

Q. Briefly, what is your experience with that, that problem?

28140 A. Well, we found these imports coming in, and our customers, previous customers, purchasing this imported cement, at considerably lower prices than we could hope to sell them cement at, and, consequently, it had the effect of taking tonnage away from us.

By Mr. Leisure:

Q. Where is that problem most serious?

A. The problem is the most serious in the New York City market, to us, which is a very important market, to us.

Q. Well, does that situation affect your plant particularly in any way, because of the fact you are a single-unit plant,—does that have any bearing?

A. Well, it does have this effect that the imports are particularly heavy along the North Atlantic Seaboard, and that is the only market that we have.

Q. What has been your experience as to whether you are able to meet those prices?—

Q. —the prices of imported cement?

28141 Q. Mr. Robeson, will you tell us why you do not
28142 meet the prices of imported cement,—if you have given consideration to it,—will you tell us what that consideration has been, and why you do not attempt to meet it?

Trial Examiner Norwood: Now, you can tell us about your costs with relation to your ability to meet them, but as to the costs of the exporters who are in Europe, unless you can qualify and show that you had knowledge about it, why, we shall exclude that part of it.

A. Well, in our own case, of course, we know our own costs, and we know that during the period of the principal impact of these imports that our own costs were rising, and we were losing money at that time, and we could not afford to go any lower.

By Mr. Leisure:

Q. Have you, in your company, and the executives, considered abandoning those markets where you have come into contact with it—

A. We never abandoned them entirely. One time we did maintain a Boston office, and our tonnage was considerable in that district, and we eventually closed our Boston office in the interests of economy, handling that business out of our New York office, and continuing to
28143 keep a field salesman in the territory, but not actively soliciting it as strenuously as we did previously.

Q. Well, then, have you or have you not considered abandoning them altogether?

A. No, you can't abandon a market altogether because it is too difficult to get back into a market; if you ever want to get back in there you have got to maintain a defensive position and maintain your contacts.

Q. Before the recess we were discussing, Mr. Robeson, whether or not you had dropped out of any of these markets because of your inability to meet the foreign cement prices.

What do you do? How do you go about developing a new market, which has not been active for some time?

A. Well, there are relatively few markets left that you

can develop, as Lehigh Valley manufacturers,—one,—and our market spread over a much wider market than they are now, and we were gradually driven back; but in order to enter into a market, what you have to do is to make a survey of it, if it is tonnage potentialities, and your likelihood of your success of what you would net out
28144 of a territory would be one of the things you could consider, and then you would have to go out and hire as capable a salesman as you could find and put him into the territory, and it would take usually—if it is a market where you have not been identified and active—it would probably take a matter of two or three years to bring back any sort of identification in that market.

Q. From what you said, are there no markets that you could develop?

A. I can't think of any that the Lehigh Valley could find.

Q. How long has your company had this problem of foreign cement competition? How long has that affected your company?

A. Well, imports began to come in in increased amounts. I would say from about the late '20's on, they began to come in with increasing importance. They were in previous to the war, and then during the war period, of course, there were no imports, and then the mills on the other side looking for markets, why, they began to drift in here, as their demands slacked off on the other side.

Q. You said that there had been a gradual increase over a certain period. Was there any time when the problem was particularly acute, as far as your company was concerned?

A. I would say that at the same time that our domestic tonnage was badly off, in the early '30's, and the imports were increasing, and we were hard pressed for domestic business, and the increase of these imports made it doubly hard.

28145 Q. Did that affect your dealer problem in any way?

A. Yes, it did, to this extent: That as we had a good dealer that had been handling our brand of cement for a number of years, and he began to go to imported cement, naturally we lost that tonnage, plus the fact that there would be other dealers handling imported cement that

would be taking business away from a dealer that we were favorably situated with.

Q. What was the condition of your own company when this problem was acute, as you have described it,—as to your own production at that time?

A. We were losing money and operating at a very low rate of capacity.

Q. When you say "low," that is comparative. What do you mean, Mr. Robeson?

A. Oh, I would say, in around those early '30's, we were probably down around 25 percent capacity.

Q. Did your company do anything, and, if so, what, in adopting a policy to try to meet this situation?

A. Well, in early 1933 we had called to our attention in the New York market that there were a number of companies that had adopted a policy of refusing to sell dealers who handled foreign cement. We studied the effects of that policy. Many of the customers we were selling seemed to be quite pleased with it, and asked us whether or not we were going to adopt a similar policy. We felt there was a certain amount of good will involved
28146 in adopting it, and we adopted the policy in January, 1933.

Q. You mentioned some other company adopting the policy; do you know what company that was at this time?

A. Why, my recollection is it was one of the larger companies that adopted the policy first, and announced it to the field. That is, they told the dealers about it, and made quite a play with it. They built themselves considerable good will. I am inclined to think it was Lone Star.

Q. How did you learn about it?

A. We would learn it through our field force, and my own contacts with the dealers.

Q. Well, was it the only one that you observed that had adopted such a policy?

A. No, my recollection of it is that as soon as the Lone Star policy was known, and the dealers received it favorably, there were a number of manufacturers adopted the same policy.

Q. Did you say you adopted the policy in 1933, Mr. Robeson?

A. That is my recollection, Mr. Leisure.

28147 The witness identified Resp. Ex. 1443-A and B and Resp. Ex. 1444-A and B as interoffice memos

written by the witness to the New York sales force concerning Nazareth's policy on imported cement that it would not sell to a dealer who was handling foreign cement. Nazareth considered such a dealer a competitor.

28148 Mr. Paulson: Your Honor, these are as the witness has testified inter office communications signed by this witness, addressed to his salesmen covering the area which foreign cement came into competition with domestic cement. Being inter-office communications signed by this witness, they are pure hearsay, and are not admissible in evidence.

We object; the witness is here on the stand and can testify to the circumstances. They contain a great deal of argumentative material, and many statements and comments with regard to the properties of foreign cement and circumstances under which foreign cement was brought in here.

If they were admitted we would be forced to rebut it by getting the testimony about qualities of foreign cement, for this witness is not competent to make the statements, and could not make these statements that are in
28149 this letter while he is on the stand, he not being an expert on foreign cement.

We object to that for those reasons.

Trial Examiner Norwood: Yes, sir; I shall so
28150 limit them, that is, that they are not to be considered as establishing the factual statements in the thing, but merely to show the action which the Respondent took in carrying out this policy and what the policy was.

They are received as conditioned, 1443-A and B and 1444-A and B, any of those facts there that are competent this witness can testify to that directly.

(RESP. EXS. 1443-A, 1443-B, 1444-A, and 1444-B were offered and received in evidence.)

28151 By Mr. Leisure:

Q. Mr. Robeson, in Respondents' Exhibit 1443-A, dated January 7, 1933, you have made the following statement: "According to reports received from some of
28152 our men in the metropolitan area some of the larger manufacturers seem to have adopted the policy that in the future they will consider as competitors all retail dealers who handle foreign cement."

When you made that statement had you made sufficient investigation to make that as a factual statement?

28153 The Witness: I would say based on reports we had from our field men in that area, and my own experience and contacts and what dealers told me that I felt reasonably certain with my cement experience that they had been told by manufacturers that the manufacturers did have such a policy.

By Mr. Leisure:

Q. Further down in the same instructions, you have said as follows:

"The activity of these dealers with foreign cement is particularly pronounced in some territories, and it is especially aggravated with those dealers who have been handling foreign and the English high early Portland cement.

The dealers have been using this cement to undersell 28154 us 30 to 50 cents a barrel."

Had you at the time you made that statement investigated those facts, and were you giving those instructions on a factual statement?

A. Yes, I was.

28155 Q. Does that represent the basis as to what you did, Mr. Robeson?

A. Yes, sir; I would say they do; yes, sir.

28156 Trial Examiner Norwood: Did you find on investigation that all the factual statements contained in those two papers were true?

The Witness: Yes, based on—

Trial Examiner Norwood: And you have now testified that they are true?

The Witness: Yes, on my cement experience; yes, sir.

Trial Examiner Norwood: All right.

Mr. Leisure: Then, on that basis, I offer them as showing three things: First, the instructions that he did give his salesmen; second, as showing the policy that his company adopted; and, third, as showing the factual situation as he considered it in his company at that time.

28157 By Mr. Leisure:

Q. Mr. Robeson, did you issue any other printed announcement of your policy other than this?

A. No, sir; we did not.

Q. Now, in what areas did you make that policy effective?

A. Originally, we made it effective in the New York area, and when we found that we had reasonable success with it there, then we made it effective in the New England area.

Q. You said you had some complaints from your dealers. From what dealers?

A. Well, we would have complaints from our friendly dealers who had been handling our brand for years, that they could not sell in competition with these other dealers at the prices that they were selling foreign cement.

Q. You say "friendly dealers,"—would that be a small proportion, or practically all of the dealers selling in that area?

A. You mean friendly to us?

Q. I am trying to find out what proportion of your dealers you received complaints from, as you have told us about?

28158 A. Well, a very large proportion of our own dealers, people who had been doing business with us for a large number of years, represented a substantial amount of tonnage to us.

Q. Mr. Robeson, at the time that you took the action that you have told us about, did you understand that

28159 you were boycotting any dealers by the methods that you used?

A. No, sir.

Q. Did you have any understanding, or agreement of any kind, with any of your competitors, with regard to what you would or would not do with respect to either selling or refraining from selling to any dealers who handled foreign cement?

A. No, sir; we arrived at our policy independently, and we made it effective independently.

Q. What is the policy of your company today? Do you sell dealers who handle foreign cement now?

A. We do; yes, sir.

Q. When did you abandon the other policy?

A. In my recollection, it was some time the latter part of 1936.

Q. What were the reasons which led you to do that?

A. Well, we found the very dealers who were quite enthusiastic about the policy when it first came into being were handling foreign cement, and we found that a number of our competitors who at one time seemed to have such a

policy, they seemed to be selling people who were handling foreign cement, and we finally decided that there was no good will to be gained by staying with the policy, and we were probably losing some tonnage, so we met the competitive situation and just went out and offered to sell anybody.

Q. Do you know a Mr. Joseph J. Ryan, who testi-
28160 fied in this proceeding in June of 1938?

A. I know of him, I don't—I know him casually.

Q. Has he ever been a customer of yours?

A. Yes, we have sold to N. Ryan Company, which is Mr. Ryan's company, off and on, for a good many years, even prior to my coming with the Nazareth Company, and we are selling him today.

Q. Do you have a man in your employ by the name of J. P. Jordan?

A. He is a Brooklyn salesman; yes, sir.

Q. Does he have charge of any district office of the Nazareth Company?

A. No, sir; he is just a field salesman.

Q. Now, during the period that your company did have this policy of refusing to sell to any dealer who handled foreign cement, did you know of, or did you ever hear of any so-called blacklist, which has been mentioned here in the record?

A. No, sir.

Q. Did you keep any record of your dealers who were handing foreign cement?

A. Yes, we kept a record in our New York office, and a copy of it to our Nazareth office.

Q. And from what sources did you develop that information?

A. Well, our mechanics were something like this:
28161 The field salesmen were expected to report to us such dealers that they found in their experience were handling foreign cement. They reported that information to their district manager; the district manager, in turn, would consult with me in Nazareth, and based on our experience I would make the decision and tell the district manager to notify the field salesman that we would no longer sell that dealer.

Q. Did you get it from any other source, the information about who these dealers were?—

A. No.

Q. —other than as you have stated?

A. No, sir; only through our own field force.

Q. Was this list that you have described, that has been circulated to your district sales office?

A. No, sir; there was only one list in our New York district office, and a list in our headquarters at Nazareth, which would be a carbon of the New York list.

Q. Now, Mr. Ryan testified here that during December of 1933 a boatload of foreign cement arrived for his company, and by noon of that particular day he said that he had been notified by most of the cement manufacturers that they would stop furnishing him domestic cement.

What was your practice when your were advised that a dealer began to handle foreign cement? Did you immediately send him notice, or what was your practice?

28162 A. No, our practice would be to just as soon as our field salesman advised us that the dealer was handling foreign cement, and after we had made our decision at Nazareth as to what we were going to do about it, we would, in turn, notify our district manager to notify the field salesman that we would no longer sell that dealer, as I stated.

Q. You said a moment ago that you adopted your policy in January, 1933. Will you tell me whether or not you sold to the Ryan Company during the year 1933?

A. Yes, we made one shipment to Ryan in 1933. If I remember it, it was probably in late spring, probably somewhere around May. The Ryan Company was one company that I remember particularly would be handling foreign cement, and that they would stop handling foreign cement, and that they would go back to handling foreign cement. I would say that during that year, 1933, or during the period that our policy was in effect, the Ryan Company was on and off foreign cement four or five times.

Q. Did you have any other orders from the Ryan Company during the remainder of 1933, other than the one you have told us about?

A. I don't believe we ever had a formal order from Ryan that we refused to sell.

Q. What about 1934, did you have any orders from Ryan in 1934?

A. My recollection is that we did sell him something in 1934; I don't know how much.

28163 Q. Are you selling to the Ryan Company at the present time?

A. Yes, sir; we are.

Q. There has been a Commission's exhibit offered in evidence, No. 1161. The heading of the exhibit in typewriting reads: "List of cars of cement manufacturers found stationed at our warehouse."

That exhibit refers to Jenney & Lux, as of June 28, and August, 1933. The list shows a Forrest W. Barber as having been in front of the Jenney & Lux warehouse.

Did you have anyone by that name in your employ?

A. We had a salesman employed at that time by that name; yes, sir.

Q. Was he acting under any company instructions at that time?

A. Only the basic instructions that every field salesman has of our company, that he is to keep us informed at all times of what brands of cement our dealers are handling, and, of course, we depended upon our field man to give us the information on who was handling foreign cement.

Q. You say they made these reports. Was it or was it not a part of their regular practice and routine to inform you what brands of cement were being sold by your dealers?

A. It was part of the daily routine of any one of our field salesmen.

28169 Trial Examiner Norwood: Until such time as it is controverted I do not see the necessity of receiving some documents here to illustrate it. The Coun-
28170 sel may keep those, and if this point is controverted, why, I shall consider making a different ruling on it, and in that case I shall take it up and study each and every one of them.

By Mr. Leisure:

Q. When you did receive these reports such as we have been referring to represented by Respondents' Exhibits 1445 to 1453, for identification, from your salesmen, namely, that some of your customers had been stocking foreign cement, what, if any, action did your company take with respect to that?

A. Well, after a consultation with the district manager in charge of the territory I would make the determination of whether or not we would give full force and effect to our policy. If so, I would notify the district manager to so instruct the field salesman.

Q. There has been evidence offered in the Commission's case, Mr. Robeson, under the charge in the complaint, that your company, with others, had made concerted deviations from prices which would normally prevail at seaboard centers.

With respect to that, I would like to ask you whether your company at any time entered into any arrangement or agreement with any of your competitors concerning the prices which you quoted at seaboard areas?

A. No, sir. We met the prices we found in the field.

28172 Q. Mr. Robeson, as to these special—or, they have been referred to both ways in the record, special or arbitrary prices, on the Atlantic Seaboard. Did your company ever initiate any of those special prices?

A. No, sir; we did not.

Q. You have mentioned this morning, I believe, something about the acuteness of the situation in 1930 or 1932. I do not just recall the exact date. Were there any other price changes with respect to arbitrary prices?

A. Do you have reference to specific ones? Do you mean do I remember each one of them?

Q. Well, specifically, I am calling your attention to 1938, and ask you whether or not there was a change.

A. There was a change in July of 1938; yes, sir.

Q. Well, without going into it in any detail, what I want to know is how you learned of the price change in that area.

A. Well, we learned of the change through our 28173 field force. There was decline made in Pennsylvania, and advance was made in the metropolitan area of New York, and the metropolitan area of Boston, and surrounding territory.

Q. Now, as to prior to 1938, was there any price change?

A. Well, there was a decline in December, 1936.

Q. And how did you learn about that?

A. We found that in the field.

Q. What, if anything, did you do about it?

A. Met it immediately, automatically.

Q. Do you remember when it became effective?

A. No, sir; we found it in the field, if I recollect, on the morning of December 8th I believe was the day the quotations hit the field.

Q. That is, they were already in effect when you learned of them?

A. Yes, sir; that is right. Lehigh was the company that made the prices.

Q. What did you do about it, if anything?

A. It so happened that day I remember full well,—I was not at my desk until pretty nearly the middle of the day. I had to make a stop at Easton, and my New York office called me on the phone and the office in Easton told me about it, and I told them to gather all the information they had on it, and I would be there around noon time; by the time I got to Nazareth at noon time they had ac-
28174 cumulated quite a picture of it. I told them, of course, we would meet the quotations and so advised all of our dealers.

Q. Was there,—prior to that, do you have any particular recollection, Mr. Robeson?

A. It seems to me in 1936 is the period of the Brooklyn stock—that the Brooklyn stock was established, or is that '35? I am a little bit lost on the date.

Q. In finding these as you have described, these prices, did they have any relation back to any constant figure?

A. The decline of 1937 had no relation back to any figure. They were evidently a set of arbitraries that had been put in by Lehigh.

Q. As to the remainder,—as to the information regarding the remainder of the Lehigh prices which you told us about that were put into effect at this time, how did you obtain that information?

28175 A. In that case I asked the Lehigh Company, some time in the afternoon of the 8th, whether or not they had got data that would give me the entire picture. We could develop the entire picture step by step; it would just save us a lot of time in the field, and they told us they had, and if we could send somebody over to their office, to Allentown, they would give us a copy, which I did.

Q. Do you send quotations to your dealers in the territory?

A. Yes, sir; we—well, first off, all that day—we spent all that day notifying our dealers that we would meet the price, the new prices that they had, at the same time issuing information as to what the prices were, and when we had the whole picture, we worked at Nazareth that night, and sent out quotations meeting all of those prices.

Q. And, in cases of that kind, what was your practice as to the dates you put on your quotations?

A. We would make our date effective the same date as we learned of the price changes. If we could get them out that night, we would get them out that night.

Q. The record shows, Mr. Robeson, that there were opening bids in Washington for the Navy Departments for the first half of 1937, and among the points involved were the Brooklyn Navy Yard and the Portsmouth Navy Yard.

Did you bid on that proposal?

A. Yes, sir; we did.

28176 Q. Do you know whether or not the Lehigh Company bid on it?

A. Lehigh Company did bid on it, and our price was higher than Lehigh's on that bid.

Q. How did you discover that?

A. Well, when we got the extract of the bids from Washington. We get them through various reporting agencies.

Q. How did you figure your price?

A. Well, the price we quoted was the market price as we knew it to be when we made up our quotation, the last information we had in the field.

Q. In that instance, did you also attempt to meet the lowest price at the destination?

A. Yes, we did, the lowest price that we could find; yes, sir.

Q. And you have told us that you were not successful in that instance?

A. You mean with regard to the navy bid?

Q. Yes.

A. Well, we quoted our market price, which was the last information. In that particular instance, we

28177 were not successful because the Lehigh had established the new market price and had so notified the Navy Department.

Q. What is your freight rate from your mill to New York, Mr. Robeson?

A. Forty-two cents a barrel to the lowest point in New York. That's the lowest rate into New York.

Q. Did the Nazareth Company establish any stock in Brooklyn in July of 1935 for the purpose of meeting this foreign competition that you have told us about?

A. We did; yes, sir.

Q. Did you find out whether or not your competitors were establishing stocks for that purpose?

A. Some of the established warehouses. We did not; we worked off freight cars.

Q. And, without describing it in detail, did you get your information in that way at that time, as you have already described, or did you get it in some other way?

A. Well, as I recall it, we did receive a notice of a filing from the Trade Practice Committee. In addition to that we found notification in the field by the North American Company that they were so establishing a stock.

Q. Well, before your competitors established the stocks there, did you have any knowledge or information that they were going to do it?

A. No, sir; we did not.

28178 Q. You mentioned a filing of some kind. Was the name of the company given in the notice that you received—

A. No, sir; it was not.

Q. —from The Cement Institute?

A. No, sir; the name I picked up was an announcement in the field.

Q. Did your company receive the filing represented by Commission's Exhibit 210-H?

A. Yes, sir; we did.

Q. Did you in turn file any notices with The Cement Institute?

A. Yes, sir; we filed that we were meeting the filing.

The witness identified Resp. Ex. 1454, dated July 8, 1935, as his letter making the filing.

28179 The witness identified Resp. Ex. 1455, dated August 5, 1935, as a letter written by him to the Trade Practice Committee amending his previous filing; Resp. Ex. 1456, dated August 16, 1935, as a letter written by him to the Trade Practice Committee further amending his filing.

28180 (RESP. EXS. 1454, 1455, 1456 were offered and received in evidence.)

By Mr. Leisure:

Q. Why did you meet this filing, Mr. Robeson?

A. Well, the establishment of the Brooklyn stocks by our competitors made a much more attractive proposition to the dealers than we had been giving them heretofore, so we automatically had to meet it or forego any business.

Q. And how did you go about establishing a stock of cement in Brooklyn?

A. In our case we found that the D. & L. W. had a terminal down at Twenty-fifth Street in Brooklyn, which was right close, which was in the vicinity of where the other manufacturers had stock, along the canal, so we made arrangements with the D. & L. W.—we are local with their lines at Nazareth—to truck cars into that terminal and have the dealers' trucks hauled to our cars at that terminal.

Q. And did you check the field there at this time to find out what your other competitors were doing?

A. Yes, sir.

Q. And did you get reports which you thought you could act upon?

A. Yes, complete reports from our field men of every move that competitors were making over there.

28181 Q. Are those exhibits some of the reports that you have just told us about (referring to the documents just marked for identification)?

A. These are all announcements by competitors to dealers in Brooklyn and Long Island which were picked up by our field force and sent in, in their usual practice.

Q. And you would have taken such action as the result of this information as you have described to us?

A. Yes.

Examination on Voir Dire by Mr. Paulson.

Q. When did you pick those up, Mr. Robeson (referring to exhibits just marked for identification 1457-A to 1463)?

A. Oh, they would be picked up in the field, Mr.

28182 Paulson, in the course of that change. The dealer won't always give them to you the same day that he gets them; he generally wants to wait. The salesmen might get them the next day.

Q. These are dated—the one I have here, Respondents' Exhibit 1461 is dated July 12, 1935. When did you get it?

A. Is there any indication?

(Mr. Paulson hands Respondents' Exhibit 1461 to the witness.)

A. I couldn't tell (witness examines document) — I couldn't tell from this, Mr. Paulson.

Q. See if you can tell from any of these, will you please

(handing to witness Respondents' Exhibits, for identification, 1457-A, B, 1458, 1459, 1460, 1462, and 1463)?

A. No, I cannot (after examining documents).

Q. What is your best recollection?

A. My best recollection would be that they would come in just about through that period that the change was made, each company established stocks out there; they sent out announcements to their trade.

Q. I notice this one announcement, for instance, says: "Effective today we will maintain stocks of Atlas."

Do you suppose, then, that was issued on July 12 (handing document to witness)?

A. (Witness examines document.) No, I don't know just when Atlas put their stock in.

28183 Q. Well, it says "effective today."

A. "Effective today," yes, it does.

Q. Does that mean, then, to you, that they handed it to the dealers or put it in the mails on July 12?

A. No, I would say that it would be possible that Atlas may have established their stocks before then, and may have notified their trade verbally, but I wouldn't know.

Q. But this was your first knowledge that stocks were going to be established, was it?

A. No, nor first knowledge of it came through the filing with the Trade Practice Committee that this particular company had filed—established stocks there.

Q. You had notice from the Trade Practice Committee that there were going to be stocks?

A. I would think that would be the first.

Q. Do you have any definite information that that would be the first?

A. No, I haven't any definite information.

Q. Do you have any definite information of having received notice from the Trade Practice Committee?

A. Yes, I do. I do,—I just don't know what the timing of it was, the date.

Q. Well, now, your testimony now is that you received your first notice from the Trade Practice Committee as to the establishment of these stocks?

28184 A. That's correct.

28185 Q. Well, you did not predicate any of your action on these, then, did you,—on these announcements that Mr. Leisure just offered? They did not mean anything?

A. Well, they do, an indication of every one of our competitors announcing to their trade that they also had established the same practice.

Q. Well, you took your action on the basis of the announcement from the Trade Practice Committee?

A. Well, coupled with that along with the talk that was in the field that there would be stocks there.

Q. Yes, but you had already taken your action before you found those announcements.

A. No, I do not remember the exact time.

Q. Read this Respondents' Exhibit 1454 and see if that refreshes your recollection.

A. Well, yes. We wrote to the Trade Practice Committee on July 8th that effective July 12th we would meet the price; in other words, we say right here, "We herewith file, will meet on their effective date, July 12th, these prices."

Q. Well, you had established your policy?

A. Yes.

Q. Those announcements had nothing to do with the establishment of your policy?

A. Well, no, that is true in this sense. This filing was made, and we made the filing, and we so instructed
28186 our offices that we would have a stock available, but in order to have a stock available we unquestionably had to start some cement down from our mills on July 11th so as to have it there on July 12th.

Direct Examination by Mr. Leisure (Continued).

Q. Mr. Robeson, Mr. Paulson asked you whether or not these exhibits had anything to do with your establishing your stock there. You had told us before the machinery you went through in establishing it and maintaining it. Now, I want to ask you whether or not this group of exhibits showing what your competitors were doing had anything to do with your policy in maintaining a stock in Brooklyn, and that was my question.

A. Yes. That would have this effect, that establishing the stock, and here were notices to the field that all
28187 these other manufacturers were establishing a stock, so the competition was real and natural, and we continued to keep the stock there.

28190 Mr. MacIntyre: He had already gotten his information from The Cement Institute, from all his competitors through The Cement Institute, and he had on the basis of that predicated his action, taken it. He took no other action. It remained in status quo after that, as the record now stands, and to now offer some exhibits attempting to show that he took some other action would confuse the record as Mr. Paulson has pointed out. It is not a matter of him bringing up information from the field as it is attempted to be shown, but he had gotten that information through The Cement Institute from all his competitors.

28192 (RESP. EXS. 1457-A, 1457-B, 1458, 1459, 1460, 1461, 1462, and 1463 were offered and received in evidence.)

By Mr. Leisure:

Q. Now, in what respects, if at all, was there more favorable or less favorable competition when you took this action?

A. Well, this made—I gave the buyer a price cost to him which was considerably lower than our cost on cars.

Q. Did you or did you not find that any of your dealers, any of your customers, continued to purchase cement delivered in cars at their siding?

28193 A. Well, in some instances we did so continually sell cement in carload lots to dealers, but it was tested cement particularly. The stock that we put in here in Brooklyn was non-tested cement to meet the competition that we had there, and we continued, in some instances, to sell cement in carload lots where it was tested, or cement coming from special bins.

Q. Was this cement in these stocks that we have been discussing suitable for special requirements?

A. No, it wouldn't meet the special requirement where the agency responsible for the work was insistent upon the test, in some particular laboratory, or some State laboratory.

Q. Well, how did it work out? Did this variation in price cause any difficulty with your customers? What was your experience?

A. Yes. Eventually our customers were coming in over wide areas. Originally, it was intended to be confined to

the dealers immediately adjacent to the foreign cement competition; but the dealers way beyond there were coming in there with their trucks and carrying the cement way back into territories where there really wasn't any foreign competition.

28194 Q. How much of an area, Mr. Robeson, did this low price affect at that time?

A. We found it going way down into Jersey, back up into Connecticut, out to the extreme end of Long Island.

Q. Mr. Robeson, why didn't you deliver to dealers' sidings f.o.b. cars, at this special price?

A. We didn't have competition in kind with them. The importer was only bringing in ordinary non-tested products.

Q. Well, you have told us that this low price was unprofitable to you, and that you only met it just as far as it extended; instead of continuing to meet it and lose money, why didn't you just withdraw from that market temporarily?

A. You couldn't afford to withdraw, Mr. Leisure. The customers involved there were customers we had had a long continued relationship with.

Trial Examiner Norwood: He has already told us about that.

28196 The witness identified Resp. Exs. 1464 through 1472, inclusive, as showing the circumstances under which Nazareth withdrew its stock in Brooklyn. Resp. Ex. 1464 is a notice from the Trade Practice Committee that the member quoting prices July 6th with regard

28197 to Brooklyn stock—was withdrawn.

28203 Q. Mr. Robeson, I am holding in my hand Respondents' Exhibit 1439, which is your quotation form in current use by your company at the present time, and it shows that you give 10 cents discount for cash within 15 days from date of shipment.

How long has your company operated with that cash discount?

A. Well, the present discount terms we have had in effect since August, 1926.

Q. Did you, prior to that time, have any different date, other than the 15 days?

A. Prior to that time it was 10 days; I believe it was 10 days before—

Q. What were the reasons that led you to make that change?

A. Well, competitors announced that they would allow 15 days, and that was more attractive to the buyer, and we had to meet it.

Q. Now, you say you had to meet it. What is your experience with respect to cash discount terms? Have you found that other manufacturers with whom your company is in competition provide similar cash discount terms, if you know?

A. I have; yes, sir—I do.

28204 Q. Would it be possible for you to continue in these markets where you have these other competitors, and quote some different cash discount?

A. Not—

28205 A. No, sir. In our relationship with our customers, the cement market is such a sensitive one from a selling standpoint—

A. That we must at all times, if we want to be in competition, participate in the business, we must make our price as low as the lowest and our terms as the most

28206 attractive that the customer has.

28208 By Mr. Leisure:

Q. As to the present discount of 10 cents for payment in 15 days, is that the result of what you found in your experience to be necessary because your competitors are doing it, or is it because of any collusion on your part with your competitors?

A. No, it is with competition that we found and met.

Q. Have you ever had any agreement with any of your competitors, or with anyone else, as to what your terms of sale would be?

A. No, sir; we have not.

Q. Do you have any trade discount at the present time?

A. No, sir; we do not.

Q. Have you had, Mr. Robeson?

A. Yes, we did have a trade discount and met the competition in 1926, the Lehigh Company established prices at that time, and allowed a trade discount of 10 cents in addition to the cash discount.

Q. How long did you follow that?

A. We continued to follow that until the Lehigh

28209 Company announced a new policy of what they called the dealer payment plan.

Q. Did your company adopt that plan?

A. Yes, sir; we did.

Q. Can you tell us about when?

28210 A. I do not recall the exact date, but it was a short time after Lehigh announced their plan and we had an opportunity to study its reaction in the field.

By Mr. Leisure:

Q. So that we get it clear on the record, something as to date: The plan you are referring to, is that represented by Exhibit 630, Respondents' Exhibit 630?

A. That appears to be it; yes, sir.

Q. And did you obtain this from the Lehigh?

A. No, we picked that up in the field.

Q. And did you issue any plan for your own,

28211 any similar statement?

A. I do not believe we issued a statement, Mr. Leisure. I think we notified our field force that we were adopting the same plan, the same type of plan.

28212 The witness identified Resp. Ex. 1473-A and B, as a wire, dated November 14, 1930, from the Building Material Dealers' Association of Metropolitan Providence addressed to Nazareth; Resp. Ex. 1474-A and B as a letter from the same Association concerning the telegram dated November 14, 1930 (Resp. Ex. 1473-A and B); Resp. Ex. 1475 as Nazareth's reply, dated December 2, 1930, to the Association's letter (Resp. Ex. 1474-A and B).

Q. And this all relates to your policy in connection with the 5-cent dealer service payment plan?

The Witness: I see.

Yes, it has to do with that plan.

28218 (RESP. EXS. 1473-A, 1473-B, 1474-A, 1474-B,

28219 and 1475 were offered and received in evidence.)

Trial Examiner Norwood: Now, you have read this document, Respondents' Exhibit 1475, which you have testified is a letter from you to the Building Material

28220 Dealers' Association.

Do you testify to the truth of all the statements made therein by you?

The Witness: I do; yes, sir.

By Mr. Leisure:

Q. Now, did you continue this plan up to the present time, or did there come a time when you discontinued it?

A. No, sir. We continued a plan that as long as it continued to be satisfactory to the majority of our dealers, there came a time when some of the dealers who were whole-heartedly in favor of it at the start—I am talking about our customers—decided they did not want it. Some wanted payment immediately, they did not want to wait until the end of the year; and then we found competitors,—I do not believe they made any public announcements,—as a matter of fact, we found competitors who said "If you buy from us we will give you 5 cents and you won't have to wait until the end of the year."

Eventually we got off the plan.

28221 Q. How long, then, did you continue the dealer service payment plan in effect?

A. I do not recall the exact date, Mr. Leisure.

Q. But, as I understand you, there did come a time when you discontinued?

A. We discontinued; yes, sir.

Q. And you observed the attitude of your dealers on that? I am now speaking of your dealers as distinguished from dealer associations.

28222 The Witness: Well, after we had been on the plan a while we found some of the dealers—when I say "dealers" I am using it with reference to our customers—who were enthusiastic about the plan at the start. Their enthusiasm began to wane, and they began to

28223 approach us from the standpoint of giving the dealer a payment of 5 cents immediately rather than make them wait until the end of the year. We found some competitors making such promises to our dealers verbally, and eventually we abandoned the whole thing.

The witness identified Resp. Ex. 1476 as a memorandum from Nazareth's Boston manager sending to the witness a copy of resolutions which were sent out by the New England Builders' Supply Association (Resp. Ex. 1477 A to C) and a letter from the Bridgeport Building Material Corporation (Resp. Ex. 1478); Resp. Ex. 1479 as the letter from the Lumbermen's Club of Sussex County; Resp. Ex. 1480 A, B and C as a letter from the Building Material Dealers' Association of Easton, Pa.; Resp. Ex. 1481 is a letter from National Retail Lumber Dealers' Asso-

28224 ciation enclosing a general letter on the new cement marketing plan which is Resp. Ex. 1482 A and B and 1483.